Amy G. Rabinowitz
Assistant General Counsel



June 20, 2006

Mary L. Cottrell, Secretary Department of Telecommunications and Energy One South Station Boston, MA 02110

**Re:** D.T.E. Docket 99-60, Investigation by the Department of Telecommunications and Energy on its own Motion into the Pricing and Procurement of Default Service Pursuant to G.L. c. 164, § 1B(d)

Dear Secretary Cottrell:

On behalf of Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid, I am submitting National Grid's Default Service filing for the period August 1, 2006 through October 31, 2006 for industrial Default Service customers. This filing includes the results of National Grid's most recent solicitation for Default Service and proposed retail rates for the Default Service pricing options resulting from the solicitation. In addition, National Grid is providing the contracts that it entered into with suppliers as a result of the solicitation ("Agreements"). National Grid respectfully requests Department approval of the Agreements within five business days of the date of this filing.

I am also enclosing a motion for confidential treatment of National Grid's analysis of the Default Service bids and unredacted versions of the Agreements. I am providing the confidential analysis and unredacted Agreements directly to Hearing Officer Jeanne Voveris.

Attachment 1 contains the Default Service wholesale prices at the retail meter for the period August 1, 2006 through October 31, 2006 for industrial Default Service customers resulting from the winning bids. Attachment 2 contains National Grid's calculation of the Default Service rates for the variable price option and three-month fixed price option for the industrial customer group reflecting the recovery of administrative costs in accordance with National Grid's Default Service Cost Reclassification Adjustment Provision, M.D.T.E. No. 1084. Attachment 3 includes the revised tariff supplement to National Grid's Tariff for Default Service<sup>1</sup>, which contains the proposed fixed and variable Default Service rates for the August 1, 2006 through October 31, 2006 period for the industrial customer group.

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<sup>&</sup>lt;sup>1</sup> National Grid's Tariff for Default Service is M.D.T.E. No. 1041.

Mary L. Cottrell, Secretary June 20, 2006 Page 2

#### **Competitive Procurement Process**

Pursuant to the Department's parameters for Default Service procurement, set forth in the Department's orders in dockets D.T.E. 99-60 and D.T.E. 02-40, National Grid issued a Request for Power Supply Proposal ("RFP") on May 12, 2006 to supply National Grid's Default Service needs. This procurement covered National Grid's entire industrial customer group Default Service supply needs for the period August 2006 through October 2006. Bidders were required to provide Zonespecific bids for each of the three Zones in which National Grid provides Default Service. This procurement is consistent with past procurements performed by National Grid.

#### Costs associated with the Renewable Portfolio Standards

Consistent with National Grid's Default Service rates currently in effect, the proposed Default Service rates contained in this filing include an estimate of the costs associated with National Grid's compliance with the Massachusetts Renewable Portfolio Standards ("RPS") that became effective on January 1, 2003. As set forth in the confidential analysis, National Grid is procuring RPS compliant certificates for a portion of its Default Service load as part of this Default Service solicitation.

#### **Capacity Market Costs**

On June 15, 2006, the Federal Energy Regulatory Commission approved a March 6, 2006 settlement agreement establishing new forward capacity market rules effective beginning in December 2006. Because this solicitation covers the August 2006 to October 2006 period, which is prior to the implementation of the new forward capacity market rules, National Grid sought bids on an all-inclusive basis (which included the cost of capacity in the prices), as it has in past procurements.

# Southeast Massachusetts Reliability Region ("SEMA") Net Commitment Period Compensation ("NCPC") Charges

The Agreements that National Grid has entered into as a result of the most recent solicitation provide that National Grid will pay suppliers their actual costs for SEMA Local Second Contingency Protection Resource NCPC charges ("SEMA NCPC Charges"). Accordingly, National Grid has included an estimate of the SEMA NCPC Charges in the proposed Default Service rate. This estimate is based on the final bids received, and is included in the confidential analysis. The difference between actual costs incurred and estimated costs billed for SEMA NCPC Charges will be reconciled through National Grid's Default Service reconciliation pursuant to the Default Service Adjustment Provision. This approach is similar to what National Grid has done in past procurements with NEMA Reliability Must Run Operating Reserve Charges.

Mary L. Cottrell, Secretary June 20, 2006 Page 3

#### **Request for Approval of Supply Contracts**

National Grid is providing the contracts that it entered into with suppliers as a result of the solicitation. As stated above, I am providing an unredacted copies of these documents directly to Hearing Officer Jeanne Voveris. Redacted copies are provided in Attachment 4 hereto.

The Agreements are subject to Department approval within five business days of the date of this filing. Accordingly, National Grid respectfully requests Department approval of the Agreements within five business days of the date of this filing.

Please do not hesitate to contact me if you have any questions. Thank you very much for your time and attention to this filing.

Very truly yours,

Amy G. Rabinowitz

Anny & Rabrawitz

cc: Service List

# COMMONWEALTH OF MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

	)	
Investigation by the Department of	)	
Telecommunications and Energy on its	)	D.T.E. 99-60
own motion into the Pricing and	)	
Procurement of Default Service	)	
Pursuant to G.L. c. 164, §1B(d)	)	
	)	

# Motion of Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid For Confidential Treatment

Pursuant to Mass. Gen. Laws c, 25, §5D, Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid ("National Grid") hereby move for confidential treatment of (1) the analysis of default service bids that National Grid received in response to its Request for Power Supply Proposal ("RFP") requesting bids for its industrial default service load for the period August 1, 2006 through October 31, 2006 ("Service Period"), and (2) the Power Supply Agreements between National Grid and its electric suppliers for the Service Period.

The analysis of default service bids and data contained in the rankings constitutes sensitive proprietary information. Protecting this information from public disclosure is in the public interest because disclosure would make public all of the competitive bids received in the RFP process. Although participants understood that the resulting rates would be tied to National Gird's supply contract prices, the disclosure of all of the competing bids could have adverse competitive effects on future bids for default service, not only for National Grid, but also for other utilities in the state that will need to seek bids for default service.

Similarly, the exact terms under which National Grid agreed to purchase default service supply needs for the Service Period are sensitive proprietary information. The disclosure of the Power Supply Agreements could have adverse competitive effects on future bids and contracts for default service, not only for National Grid, but also for other utilities in the state that will need to seek bids and enter into contracts for default service. National Grid is providing a redacted, non-confidential version of the Power Supply Agreements to the Department in its June 20, 2006 filing in this docket.

Respectfully submitted,
MASSACHUSETTS ELECTRIC COMPANY
NANTUCKET ELECTRIC COMPANY
d/b/a NATIONAL GRID

By their attorney,

Amy G. Rabinowitz

Anny & Rabrawith

25 Research Drive

Westboro, MA 01582

Dated: June 20, 2006

#### CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2006, I served a copy of the Motion of Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid for Confidential Treatment on the Service List in D.T.E. 99-60 by personal delivery or first class mail.

Signed under the pains and penalties of perjury

Anny & Rabrawitz

Amy G. Rabinowitz

Attorney for Massachusetts Electric Company and Nantucket Electric Company d/b/a National Grid

Dated: June 20, 2006

## **ATTACHMENT 1**

Massachusetts Electric Company Nantucket Electric Company D.T.E. 99-60 Attachment 1 Page 1 of 1

#### Massachusetts Electric Company Nantucket Electric Company d/b/a National Grid

Default Service Prices (cents per kWh at retail) Industrial: August 2006 - October 2006

	Contract Month	1	2	3
	Calendar Month	8	9	10
	Year	2006	2006	2006
Customer G	roup			
Industrial				
	SEMA	11.004	9.740	10.254
	WCMA	10.063	8.848	8.907
	NEMA	10.916	8.944	9.180
	Portion of load served	100%	100%	100%

#### Footnotes

1) Monthly prices calculated as the average cost of supply (converted to retail delivery) in a confidential submission under separate cover.

## **ATTACHMENT 2**

Massachusetts Electric Company Nantucket Electric Company D.T.E. 99-60 Attachment 2 Page 1 of 4

#### **Massachusetts Electric Company Nantucket Electric Company** d/b/a/ National Grid

Summary of Proposed Default Service Charges August 2006 - October 2006

		Zonal Default Service Charges			
	Section 1: Variable Default Service Charges, ¢/kWh	NEMA Industrial (G-2, G-3) (a)	SEMA Industrial (G-2, G-3) (b)	WCMA Industrial (G-2, G-3) (c)	
(1)	August 2006	10.935	11.023	10.082	
(2)	September 2006	8.963	9.759	8.867	
(3)	October 2006	9.199	10.273	8.926	
	Section 2: Fixed Default Service Charge, ¢/kWh				
(4)	August 2006 - October 2006	9.717	10.357	9.304	

- (1) NEMA G-2,G-3: Page 2, Line (8), Column (a) SEMA G-2,G-3: Page 3, Line (8), Column (a) WCMA G-2,G-3: Page 4, Line (8), Column (a)
- (2) NEMA G-2,G-3: Page 2, Line (8), Column (b) SEMA G-2,G-3: Page 3, Line (8), Column (b) WCMA G-2,G-3: Page 4, Line (8), Column (b)
- (3) NEMA G-2,G-3: Page 2, Line (8), Column (c) SEMA G-2,G-3: Page 3, Line (8), Column (c) WCMA G-2,G-3: Page 4, Line (8), Column (c)
- (4) NEMA G-2,G-3: Page 2, Line (10), Column (d) SEMA G-2,G-3: Page 3, Line (10), Column (d) WCMA G-2,G-3: Page 4, Line (10), Column (d)

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Massachusetts Electric Company Nantucket Electric Company D.T.E. 99-60 Attachment 2 Page 2 of 4

#### **Massachusetts Electric Company Nantucket Electric Company** d/b/a/ National Grid

NEMA Industrial Fixed Default Service Charge (Rates G-2 and G-3) Based on Weighted Average Effective Default Service Prices August 2006 - October 2006

#### Section 1: Percentage of Industrial kWhs Attributable to Default Service in NEMA

(1)	May 2006 Industrial Default Service kWhs in the NEMA Zone 45,413,473					
(2)	May 2006 Total Industrial kWhs 833,342,536					
(3)	Percentage of NEMA Industrial Default Service kWhs to Total Industrial kWhs			5.45%		
	Section 2: Projected NEMA Industrial Default Service kWhs, August 2006 - O	ctober 2006				
		2006 <u>August</u> (a)	September (b)	October (c)	Total (d)	
(4)	Projected Total Company Industrial kWhs	983,711,745	963,755,004	907,933,769	2,855,400,518	
(5)	Percentage of NEMA Industrial Default Service kWhs to Total Industrial kWhs	<u>5.45%</u>	<u>5.45%</u>	5.45%		
(6)	Projected NEMA Industrial Default Service kWhs 53,607,928 52,520,374 49,478,30					
	Section 3: Weighted Average NEMA Industrial Default Service Charge for Au	ugust 2006 - Oct	ober 2006			
(7)	Projected NEMA Industrial Default Service kWhs	53,607,928	52,520,374	49,478,364	155,606,667	
(8) (9) (10)	Estimated NEMA Industrial Default Service Price per kWh Default Service Cost Reclassification Adjustment Factor Total Estimated NEMA Industrial Default Service Price per kWh	\$0.10916 \$0.00019 \$0.10935	\$0.08944 \$0.00019 \$0.08963	\$0.09180 \$0.00019 \$0.09199		
(11)	Projected NEMA Industrial Default Service Cost, August 2006 - October 2006 \$5,862,027 \$4,707,401 \$4,551,51				\$15,120,943	
(12)	Weighted Average NEMA Industrial Default Service Charge, Fixed Price Option, for August 2006 - October 2006					
(13)	Currently Effective NEMA Industrial Default Service Charge, Fixed Price Option					
(14)	Proposed Decrease to NEMA Industrial Default Service Charge, Fixed Price Option				(\$0.00013)	

- (1) Per Company billing records based upon Load Zone designation for each customer account
- (2) May 2006 DOER Form 110, sum of Mass. Electric and Nantucket Electric (Rates G-2 and G-3)
- (3) Line  $(1) \div \text{Line } (2)$
- (4) Per Company forecast
- (5) Line (3)
- Line (4) x Line (5) (6)
- (7) Line (6)
- (8) Attachment 1, Industrial
- (9) Per Default Service Cost Reclassification Adjustment Provision, MDTE No. 1084
- Line (8) + Line (9)(10)

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Massachusetts Electric Company Nantucket Electric Company D.T.E. 99-60 Attachment 2 Page 3 of 4

#### **Massachusetts Electric Company Nantucket Electric Company** d/b/a/ National Grid

SEMA Industrial Fixed Default Service Charge (Rates G-2 and G-3) Based on Weighted Average Effective Default Service Prices August 2006 - October 2006

(1)	May 2006 Industrial Default Service kWhs in the SEMA Zone 63,724,46				
(2)	May 2006 Total Industrial kWhs 833,342,536				
(3)	Percentage of SEMA Industrial Default Service kWhs to Total Industrial kWhs			7.65%	
	Section 2: Projected SEMA Industrial Default Service kWhs, August 2006 - O	ctober 2006			
		2006 <u>August</u> (a)	September (b)	October (c)	Total (d)
(4)	Projected Total Company Industrial kWhs	983,711,745	963,755,004	907,933,769	2,855,400,518
(5)	Percentage of SEMA Industrial Default Service kWhs to Total Industrial kWhs	<u>7.65%</u>	<u>7.65%</u>	<u>7.65%</u>	
(6)	Projected SEMA Industrial Default Service kWhs	73,696,917	69,428,350	218,348,247	
	Section 3: Weighted Average SEMA Industrial Default Service Charge for A	ugust 2006 - Oct	ober 2006		
(7)	Projected SEMA Industrial Default Service kWhs	75,222,980	73,696,917	69,428,350	218,348,247
(8) (9) (10)	Estimated SEMA Industrial Default Service Price per kWh Default Service Cost Reclassification Adjustment Factor Total Estimated SEMA Industrial Default Service Price per kWh	\$0.11004 \$0.00019 \$0.11023	\$0.09740 \$0.00019 \$0.09759	\$0.10254 \$0.00019 \$0.10273	
(11)	Projected SEMA Industrial Default Service Cost, August 2006 - October 2006	\$8,291,829	\$7,192,082	\$7,132,374	<u>\$22,616,286</u>
(12)	Weighted Average SEMA Industrial Default Service Charge, Fixed Price Option, for August 2006 - October 2006				
(13)	Currently Effective SEMA Industrial Default Service Charge, Fixed Price Option				
(14)	Proposed Increase to SEMA Industrial Default Service Charge, Fixed Price Option				\$0.00999

- (1) Per Company billing records based upon Load Zone designation for each customer account
- (2) May 2006 DOER Form 110, sum of Mass. Electric and Nantucket Electric (Rates G-2 and G-3)
- Line (1) ÷ Line (2) (3)
- (4) Per Company forecast
- (5) Line (3)
- (6) Line (4) x Line (5)
- (7) Line (6)
- (8) Attachment 1, Industrial
- (9) Per Default Service Cost Reclassification Adjustment Provision, MDTE No. 1084
- (10)Line (8) + Line (9)

20-Jun-06

Massachusetts Electric Company Nantucket Electric Company D.T.E. 99-60 Attachment 2 Page 4 of 4

#### **Massachusetts Electric Company Nantucket Electric Company** d/b/a/ National Grid

WCMA Industrial Fixed Default Service Charge (Rates G-2 and G-3) Based on Weighted Average Effective Default Service Prices August 2006 - October 2006

Section 1: Percentag	e of Industrial kWhs	Attributable to 1	Default Service in V	/CMA

(1)	May 2006 Industrial Default Service kWhs in the WCMA Zone 88,449,979					
(2)	May 2006 Total Industrial kWhs 833,342,536					
(3)	Percentage of WCMA Industrial Default Service kWhs to Total Industrial kWhs			10.61%		
	Section 2: Projected WCMA Industrial Default Service kWhs, August 2006 -	October 2006				
		2006 <u>August</u> (a)	September (b)	October (c)	Total (d)	
(4)	Projected Total Company Industrial kWhs	983,711,745	963,755,004	907,933,769	2,855,400,518	
(5)	Percentage of WCMA Industrial Default Service kWhs to Total Industrial kWhs	10.61%	10.61%	10.61%		
(6)	Projected WCMA Industrial Default Service kWhs 104,409,987 102,291,802 96,367,003					
	Section 3: Weighted Average WCMA Industrial Default Service Charge for A	August 2006 - Oc	ctober 2006			
(7)	Projected WCMA Industrial Default Service kWhs	104,409,987	102,291,802	96,367,003	303,068,792	
(8) (9) (10)	Estimated WCMA Industrial Default Service Price per kWh Default Service Cost Reclassification Adjustment Factor Total Estimated WCMA Industrial Default Service Price per kWh	\$0.10063 \$0.00019 \$0.10082	\$0.08848 \$0.00019 \$0.08867	\$0.08907 \$0.00019 \$0.08926		
(11)	Projected WCMA Industrial Default Service Cost, August 2006 - October 2006	\$10,526,615	\$9,070,214	\$8,601,719	\$28,198,548	
(12)	Weighted Average WCMA Industrial Default Service Charge, Fixed Price Option, for August 2006 - October 2006					
(13)	Currently Effective WCMA Industrial Default Service Charge, Fixed Price Option					
(14)	Proposed Decrease to WCMA Industrial Default Service Charge, Fixed Price Option	on			(\$0.00125)	

- (1) Per Company billing records based upon Load Zone designation for each customer account
- (2) May 2006 DOER Form 110, sum of Mass. Electric and Nantucket Electric (Rates G-2 and G-3)
- Line (1) ÷ Line (2) (3)
- (4) Per Company forecast
- Line (3) (5)
- (6) Line (4) x Line (5)
- (7) Line (6)
- (8) Attachment 1, Industrial
- (9) Per Default Service Cost Reclassification Adjustment Provision, MDTE No. 1084
- Line (8) + Line (9) (10)

## **ATTACHMENT 3**

# MASSACHUSETTS ELECTRIC COMPANY NANTUCKET ELECTRIC COMPANY SUPPLEMENT TO TARIFF FOR DEFAULT SERVICE FOR THE PERIOD MAY 2006 THROUGH OCTOBER 2006

In accordance with the terms of the Tariff for Default Service, the rates for Default Service for customers receiving such service from the Company, are as follows. All rates will be applied as a uniform  $\phi$  per kWh charge, for usage on and after the first day of each calendar month.

		Tariff				
Rate	R-1, R-2 R-4, E	<u>G-1</u>	SEMA	G-2, G-3 WCMA	NEMA	S-1, S-2 <u>S-3, S-5, S-20</u>
Fixed Price Option:	9.693¢	9.763¢	10.357¢	9.304¢	9.717¢	9.763¢
Variable Price Option:						
May 2006	8.745¢	8.928¢	n/a	n/a	n/a	8.928¢
June 2006	9.284¢	9.397¢	n/a	n/a	n/a	9.397¢
July 2006	10.654¢	10.701¢	n/a	n/a	n/a	10.701¢
August 2006	10.700¢	10.769¢	11.023¢	10.082¢	10.935¢	10.769¢
September 2006	9.142¢	9.195¢	9.759¢	8.867¢	8.963¢	9.195¢
October 2006	9.177¢	9.262¢	10.273¢	8.926¢	9.199¢	9.262¢

The Fixed Price Option for Residential and Commercial customer groups (R-1, R-2, R-4, E, G-1, S-1, S-2, S-3, S-5, S-20) is effective for the period May 1, 2006 through October 31, 2006. The Fixed Price Option for the Industrial customer group (G-2, G-3) is effective for the period August 1, 2006 through October 31, 2006.

Effective: August 1, 2006

## **ATTACHMENT 4**

#### MASSACHUSETTS POWER SUPPLY AGREEMENT

This **POWER SUPPLY AGREEMENT** ("Agreement") is dated as of **June 14, 2006** and is by and between **MASSACHUSETTS ELECTRIC COMPANY** ("MECo"), a Massachusetts corporation and **NANTUCKET ELECTRIC COMPANY** ("Nantucket"), a Massachusetts corporation (MECo and Nantucket together "Mass. Electric") Mass. Electric and Nantucket are referred to collectively herein as "Buyer"), and each shall be severally and not jointly liable hereunder and ("Seller"). This Agreement provides for the sale by Seller of Default Service, as defined herein, to the Buyer. MECo, Nantucket, and Seller are referred to herein individually as a "Party" and collectively as the "Parties".

#### ARTICLE 1. BASIC UNDERSTANDINGS

Seller, in response to a Request for Proposal dated May 12, 2006 issued by the Buyer, has been selected to be the supplier of firm, load-following power to meet the Buyer's Default Service Requirements as defined in the Default Service Requirements Matrix found in Appendix C. This Agreement sets forth the terms under which Seller will supply Default Service to Buyer for the period commencing with the beginning of the HE 0100 EPT on the Commencement Date in Appendix C and continuing through and including the end of the HE 2400 EPT on Conclusion Date in Appendix C (the "Delivery Term(s)").

#### ARTICLE 2. DEFINITIONS

As used in this Agreement, the following terms shall have the meanings specified in this Article. In addition, except as otherwise expressly provided, terms with initial capitalization used in this Agreement and not defined herein shall have the meaning as defined in the NEPOOL Rules.

<u>Affiliate</u> means, with respect to any Party, any entity (other than a person) that, directly or indirectly, controls, or is controlled by, or is under common control with, such Party. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

<u>Aggregate RPS Requirement</u> means the total of the RPS Requirement for each calendar month during the Delivery Term.

<u>Alternative Compliance Payment Rate means</u> the value as published by the Massachusetts Division of Energy Resources in accordance with 225 CMR 14.08 (4) (a) 2.

**Business Day** means a 24-hour period ending at 5:00 p.m. EPT, other than Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions in Boston, Massachusetts are authorized by law or other governmental action to close.

<u>Buyer</u> means Massachusetts Electric Company and Nantucket Electric Company, their successors, assigns, employees, agents and authorized representatives.

<u>Buyer's System</u> means the electrical transmission and distribution system of the Buyer and the electrical transmission and distribution system of any Affiliate of the Buyer.

**Buyer's Service Territory** means the geographic area served by Massachusetts Electric Company and Nantucket Electric Company including the service territory formerly served by Eastern Edison Company which has been merged with and into Massachusetts Electric Company.

<u>Commencement Date</u> means, with respect to a customer group in the NEMA Load Zone, the SEMA Load Zone or the WCMA Load Zone, the period at HE 0100 EPT on the date set forth for the customer group in Appendix C.

**Commission** means the Federal Energy Regulatory Commission, or its successor.

<u>Competitive Supplier Terms</u> means Mass. Electric's Model Terms and Conditions for Competitive Suppliers, M.D.T.E. No. 1063, as may be amended from time to time.

<u>Conclusion Date</u> means, with respect to a customer group in the NEMA Load Zone, the SEMA Load Zone or the WCMA Load Zone, the end of the HE 2400 EPT on the date set forth for the customer group in Appendix C.

<u>Credit Rating</u> means (i) the lower of the ratings assigned to an entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P and Moody's, (ii) in the event the entity does not have a rating for its senior unsecured long-term debt, the lower of the rating assigned to the entity as an issuer rating by S&P and Moody's, or the rating assigned to the entity as an issuer rating by any other rating agency agreed to by both Parties in each Party's sole and exclusive judgment.

<u>Customer Disconnection Date</u> means the date when a Default Service Customer is disconnected from service, as determined by the Buyer in accordance with the Distribution Service Terms.

<u>Customer Termination Date</u> means the date when a Default Service Customer ceases to take service under the Default Service Tariff, each date as determined by the Buyer in accordance with the Distribution Service Terms.

<u>Default Service</u> means the provision of Requirements by Seller at the Delivery Point to the Buyer to meet all needs of Default Service Customers.

<u>Default Service Customer(s)</u> means the retail customer(s) in the Industrial Customer Group of the Buyer taking service pursuant to the Default Service Tariff during the applicable Delivery Term.

<u>Default Service Tariff</u> means Buyer's Tariff for Default Service, M.D.T.E. No. 1041, as may be amended from time to time and approved by the Department.

<u>Delivered Energy</u> means the quantity of energy, expressed in megawatt-hours, provided by Seller under the terms of this Agreement. This quantity shall be the sum of the quantity of energy reported to the ISO by the Buyer for each of the Load Assets identified in Section 6.4, with such quantity determined by the Buyer in accordance with Section 6.3 of this Agreement.

Such quantity shall not include any allocation of PTF losses (which the ISO may assess to Seller in relation to such energy), but shall include transmission and distribution losses on the Buyer's System from the Delivery Point to the meters of Default Service Customers.

Delivery Point means for each Load Asset identified in or in accordance with Section 6.4 (i) the Nodes at which the Real-Time Load Obligations are established in the ISO Settlement Power System Model for the registered Load Assets representing the physical loads of Default Service Customers for the Delivery Term for such customers, identified by the Load Asset ("Loads With Nodes"), for any period and in any location in which there are Loads With Nodes and the ISO requires use of Nodes for Real-Time Load Obligations, or (ii) the Load Zones at which the Real-Time Load Obligations are established in the ISO Settlement Power System Model for the Load Assets representing the physical loads of Default Service Customers for the Delivery Term for such customers, identified by the Load Asset ("Loads with Zones") if (a) the ISO does not require use of Nodes for Real-Time Load Obligations and (b) the use of Loads with Zones in a calculation of ISO settlement charges and costs yields the same mathematical result as a calculation thereof using Loads with Nodes; or (iii) in the event of neither (i) nor (ii), Loads with Nodes and, in any location in which there are no Loads with Nodes, Loads with Zones.

**<u>Delivery Term(s)</u>** means the definition set forth in Article 1.

**<u>Department</u>** means the Massachusetts Department of Telecommunications and Energy.

<u>Distribution Service Terms</u> means Mass. Electric's Terms and Conditions for Distribution Service, M.D.T.E. No. 997, as may be amended from time to time and approved by the Department.

**EPT** means Eastern Prevailing Time.

Governing Documents means, with respect to any particular entity, (a) if a corporation, the (i) articles of organization, articles of incorporation or certificate of incorporation and (ii) the bylaws; (b) if a general partnership, the partnership agreement and any statement of partnership; (c) if a limited partnership, the limited partnership agreement and the certificate of limited partnership; (d) if a limited liability company, the articles or certificate of organization or formation and operating agreement; (e) if another type of entity, any other charter or similar document adopted or filed in connection with the creation, formation or organization of such entity; (f) all equity holders' agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of any entity or relating to the rights, duties and obligations of the equity holders of any entity; and (g) any amendment or supplement to any of the foregoing.

<u>Industrial Contract Rate</u> means the value as set forth in Appendix D for the SEMA Load Zone, NEMA Load Zone and WCMA Load Zone, as applicable to a month in the Delivery Term.

<u>Industrial Customer Group</u> means the Buyer's customers in the Rate G-2 and Rate G-3 retail rate classes (the "Industrial Rate Classes"), or such other rate classes as may be added from time to time in the SEMA Load Zone, NEMA Load Zone and WCMA Load Zone, as applicable during the Delivery Term, provided that such Industrial Rate Classes shall be comprised of customers previously in one of the Industrial Rate Classes or such customer would have qualified for one of the Industrial Rate Classes.

<u>Initiation Date</u> means the date a retail customer of the Buyer begins taking service pursuant to the Default Service Tariff as determined by the Buyer in accordance with the Distribution Service Terms.

<u>Interest Rate</u> means, for any date, the lesser of (a) the per annum rate of interest equal to the prime lending rate as may from time to time be published in *The Wall Street Journal* under "Money Rates" on such day (or if not published on such day, on the most recent preceding day on which published), plus two percent (2%) and (b) the maximum rate permitted by applicable law.

<u>Investment Grade</u> means (i) if any entity has a Credit Rating from both S&P and Moody's then, a Credit Rating from S&P equal to or better than "BBB-" and a Credit Rating from Moody's equal to or better than "Baa3"; or (ii) if an entity has a Credit Rating from only one of S&P and Moody's, then a Credit Rating from S&P equal to or better than "BBB-" or a Credit Rating from Moody's equal to or better than "Baa3 or (iii) if the Parties have mutually agreed in writing on an additional or alternative rating agency, then a credit rating equal to or better than that mutually agreed to by the Parties in each Party's sole and exclusive judgment.

<u>ISO</u> means ISO New England Inc., authorized by the Commission to exercise for New England the functions required pursuant to the Commission's Order No. 2000 (and its progeny) and the Commission's regulations, and any successor organization (including but not limited to a Regional Transmission Organization.).

<u>ISO Tariff</u> means the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, as amended, modified, superseded and supplemented from time to time, and including the Market Rules and Procedures.

<u>ISO New England Operating Documents</u> means the ISO Tariff and the ISO New England Operating Procedures, as amended, modified, superseded and supplemented from time to time.

**Locational Marginal Pricing** means as set forth in the Market Rules and Procedures.

<u>Market Rules and Procedures</u> means the Market Rules, Manuals and Procedures adopted by the ISO and/or NEPOOL, as may be amended from time to time, and as administered by the ISO to govern the operation of the NEPOOL markets.

Material Adverse Effect means, with respect to a Party, any change in or effect on such Party after the date of this Agreement that is materially adverse to the transactions contemplated hereby, excluding any change or effect resulting from (a) changes in the international, national, regional or local wholesale or retail markets for electric power; (b) changes in the international, national, regional or local markets for any fuel; (c) changes in the North American, national, regional or local electric transmission or distribution systems; and (d) any action or inaction by a governmental authority, but in any such case not affecting the Parties or the transactions contemplated hereby in any manner or degree significantly different from others in the industry as a whole.

<u>MECo Service Territory</u> means the geographic area in which Massachusetts Electric Company provides service to retail customers, including the service territory formerly served by Eastern Edison Company which has been merged with and into Massachusetts Electric Company.

**Moody's** means Moody's Investors Service, its successors and assigns.

MWh means Megawatt-hour.

<u>Nantucket Service Territory</u> means the geographic area served by Nantucket Electric Company.

<u>NE-GIS</u> means the NEPOOL Generation Information System, which includes a generation information database and certificate system, operated by NEPOOL, its designee or successor entity, that accounts for generation attributes of electricity consumed within New England.

<u>NEMA Load Zone</u> means the Northeast Massachusetts Reliability Region as defined in the NEPOOL Rules.

**NEPOOL** means the New England Power Pool, or its successor.

**NEPOOL Agreement** means the Second Restated New England Power Pool Agreement dated as of February 1, 2005, as amended or accepted by the Commission and as may be amended, modified, superseded, supplemented and/or restated from time to time.

NEPOOL Rules means all rules adopted by NEPOOL or the ISO, as such rules may be amended, modified, supplemented or superseded and restated from time to time, including but not limited to, the NEPOOL Agreement, the ISO Tariff, the ISO New England Operating Documents, the Transmission Operating Agreement, the Participants Agreement, the NEPOOL Manuals, and the NEPOOL Operating Procedures, as amended, superseded or restated from time to time.

<u>Net Worth</u> means total assets, exclusive of intangible assets, less total liabilities, as reflected on the most recent balance sheet prepared by a certified public accountant as part of a certified financial statement in accordance with generally accepted accounting principles consistently applied in the business sector of the Seller.

**PTF** means facilities categorized as Pool Transmission Facilities under the ISO Tariff.

<u>Requirements</u> means all electric generation and/or market purchases and delivery, to the Delivery Point, of the electric capacity, energy, ancillary services, operating reserves (including forward reserves) and all other market products required by the Buyer to provide kilowatt-hours to meet the needs of Default Service Customers to the Delivery Term.

**SEMA Load Zone** means the Southeast Massachusetts Reliability Region as defined in the NEPOOL Rules.

**S&P** means Standard & Poor's Rating Group, its successors and assigns.

<u>WCMA Load Zone</u> means the Western Central Massachusetts Reliability Region as defined in the NEPOOL Rules.

# ARTICLE 3. <u>TERM, SERVICE PROVISIONS AND REGISTRATION</u> REQUIREMENTS

#### Section 3.1 <u>Effective Date; Condition Precedent; Filing Obligation; Term</u>

- (a) This Agreement shall be binding on the Parties upon execution by all Parties (such date the "Effective Date"). Promptly after execution by both Parties, Buyer shall submit this Agreement to the Department for its approval. The Parties performance of Sections 3.2 through 6.4 are subject to the occurrence, on or before the fifth Business Day after (but not including) the Buyer's submission of the Agreement to the Department (the "Fifth Day"), of either (a) approval by the Department of this Agreement or (b) the Department taking no action on the Buyer's request for approval of the Agreement. If the Department issues an order denying Buyer's request to approve the Agreement as executed (including by way of an order using terms of similar effect to signify its disapproval or rejection of the Agreement or of the request for approval of the Agreement) on or before the Fifth Day (a "Department Denial"), then this Agreement shall be null and void and of no further force and effect, and neither Party shall have any obligation whatsoever to the other Party, and such a voiding of the Agreement and the Department Denial shall not be a default or constitute an Event of Default by either Party.
- (b) In the event that on or before the Fifth Day the Department approves the Agreement conditioned upon the amendment of the Agreement to incorporate a new term or amend an existing term, each Party shall independently determine whether it is willing to amend the Agreement to incorporate the Department's condition. (The date that the Department issues such order shall be the "Order Date".) If either (a) a Party notifies the other Party(ies) (in accordance Section 8.1) at any time prior to HE 1700 local prevailing time in Boston on the date that is three (3) Business Days after (but not including) the Order Date that it will not amend the Agreement to incorporate the Department's condition or (b) the Parties have not executed such amendment on or before HE 1700 local prevailing time in Boston on the date that is three (3) Business Days after (but not including) the Order Date, this Agreement shall be null and void and of no further force and effect and neither Party shall have any obligation whatsoever to the other Party, and the provision of such notice shall not be a default or constitute an Event of Default.
- (c) As of the expiration of this Agreement or, if earlier, its termination, the Parties shall no longer be bound by the terms and provisions hereof, except (a) to the extent necessary to enforce the rights and obligations of the Parties arising under this Agreement before such expiration or termination and (b) the obligations of the Parties hereunder with respect to audit rights, remedies for default, damages claims, indemnification and defense of claims shall survive the termination or expiration of this Agreement to the full extent necessary for their enforcement and the protection of the Party in whose favor they run, subject to any time limits specifically set forth in this Agreement.

#### Section 3.2 Commencement of Supply

(a) Beginning as of the Commencement Date applicable to the customer group set forth on Appendix C, Seller shall provide Requirements to the Buyer. For purposes of certainty:

Seller's obligations on the Commencement Date shall be to provide Requirements for all Default Service Customers taking service as of and including the Commencement Date.

- (b) With respect to each person or entity that becomes a Default Service Customer subsequent to the Commencement Date, Seller shall provide Requirements to the Buyer to meet the needs of the Default Service Customer(s) as of and including the Initiation Date for such customer initiating such service during the Delivery Term.
- (c) If Seller elects to receive electronic notification as provided in Section 3.7, the Buyer shall provide to Seller a notice of Initiation Date via electronic file transfer and in a format specified by the Buyer. Each notice of Initiation Date shall include the account number, the date Seller's service to the Buyer is to begin for a Default Service Customer and the customer's rate class.

#### Section 3.3 <u>Termination and Conclusion of Supply</u>

- (a) With respect to each Default Service Customer that terminates Default Service during the Delivery Term, Seller shall provide Requirements to the Buyer for such customer on the Customer Termination Date but shall not provide Requirements for such customer after the Customer Termination Date.
- (b) If Seller elects to receive electronic notification as provided in Section 3.7, the Buyer shall provide to Seller a notice of Customer Termination Date via electronic file transfer and in a format specified by the Buyer. Each notice of Customer Termination Date shall include the account number, the Customer Termination Date and the customer's rate class.
  - (c) Seller's obligation to provide Requirements shall cease at the Conclusion Date.

#### Section 3.4 Customer Disconnection Date

- (a) With respect to each Default Service Customer whose Default Service is disconnected during the Delivery Term, Seller shall provide Requirements to the Buyer for such customer on the Customer Disconnection Date but shall not provide Requirements for such customer after the Customer Disconnection Date.
- (b) If Seller elects to receive electronic notification as provided in Section 3.7, The Buyer shall provide to Seller a notice of Customer Disconnection Date via electronic file transfer and in a format specified by the Buyer. Each notice of Customer Disconnection Date shall include the account number, the Customer Disconnection Date and the customer's rate class.

#### Section 3.5 <u>Distribution Service Interruptions</u>

Seller acknowledges that interruptions in distribution service occur and may reduce the load served hereunder. Seller further acknowledges and agrees that the Buyer may interrupt distribution service to customers consistent with the Distribution Service Terms and the Competitive Supplier Terms. In no event shall a Party have any liability or obligation to the other Party in respect of any such interruptions in distribution service.

#### Section 3.6 Release of Customer Information

The Buyer will not issue any customer information to Seller unless Seller has first obtained the necessary authorization in accordance with the provisions of the Competitive Supplier Terms.

#### Section 3.7 Electronic Notification

At Seller's election, the Buyer shall provide notices contemplated by Sections 3.2, 3.3 and 3.4 via electronic file transfer. Such election shall only be effective when Seller (i) establishes an account on the Advantis Value Added Network ("VAN"), and (ii) verifies its ability to transfer files to and receive files from the Buyer at least fourteen (14) days prior to the day on which Seller desires to commence electronic receipt. Seller shall bear all costs to establish an account and all costs of Seller and the Buyer to use the VAN. If Seller fails to pay all VAN costs and charges when due and payable, Seller's election shall not be valid and the Buyer shall no longer be obligated to provide electronic notification.

#### Section 3.8 Change in Supply; No Prohibition on Programs

- (a) Seller acknowledges and agrees that the number of customers and the Requirements to meet the needs of such customers will fluctuate throughout the Delivery Term and may equal zero. The Buyer shall not be liable to Seller for any losses Seller may incur, including but not limited to lost revenues, and losses that may result from any change in Requirements, number or location of customers taking service, the location of the Delivery Point(s), the composition or components of market products or Requirements, or the market for electricity, or change in the Distribution Service Terms or the Default Service Tariff. Seller further acknowledges and agrees that there is no limit on the number of Customer Initiation Dates, Customer Termination Dates and Customer Disconnection Dates.
- (b) Seller acknowledges and agrees that the Buyer has the right but not the obligation to continue, initiate, support or participate in any programs, promotions, or initiatives designed to or with the effect of encouraging customers to leave Default Service for any reason ("Programs"). Nothing in this Agreement shall be construed to require notice to or approval of Seller in order for the Buyer to take any action in relation to Programs.
- (c) Seller acknowledges and agrees that the Buyer and Affiliates of the Buyer will not provide Seller preferential access to or use of the Buyer's System and that Seller's sole and exclusive rights and remedies with regard to access to, use or availability of the Buyer's System, and the Buyer's or Affiliates of the Buyer's obligation to transmit electricity are those rights, remedies and obligations provided under the Distribution Service Terms or the NEPOOL Rules.

#### Section 3.9 <u>Uniform Disclosure Requirements</u>

To the extent Seller uses generation resources owned by it to provide Requirements under this Agreement, Seller shall provide the Buyer information pertaining to power plant emissions, fuel types, labor information and any other information required by the Buyer to comply with the uniform disclosure requirements contained in 220 CMR 11.00 and any other disclosure regulations which may be imposed upon the Buyer during the term of this Agreement, as such disclosure requirements apply to Default Service provided by Seller pursuant to this Agreement. To the extent it can be reasonably obtained, Seller shall also provide such information for generation sources used by it to provide Requirements to Buyer. Any information provided for generation sources that Seller does not own, Seller cannot provide any assurances of the

accuracy of said information.

Seller shall utilize the NE-GIS to transfer Load Obligations or NE-GIS Certificates, as applicable, to the Buyer's certificate account in the number equal to the Delivered Energy for Default Service in a month. Such Load Obligations or NE-GIS Certificates, as applicable, shall be delivered by Seller at least five (5) Business Days prior to the close of the applicable Trading Period.

#### Section 3.10 Customer Bill Inserts

Seller may furnish the Buyer with a one page bill insert which the Buyer may include in the bill that the Buyer sends to each Default Service Customer in the Industrial Customer Group as to which Seller is providing Requirements to the Buyer during the Delivery Term for such customer group. Bill inserts provided by Seller shall be included in only one monthly billing cycle during the Delivery Term. Such inserts shall be printed on 60# Mountie Matte paper, shall be three and one-quarter inches high by six and one-quarter inches wide in size and may be of any typeface except ITC Century and ITC Franklin Gothic.

Seller shall notify the Buyer at least sixty (60) days prior to the start of the monthly billing cycle in which Seller requests Buyer to include Seller's insert in Default Service Customer bills. A copy of the proposed bill insert is to be included with Seller's initial notification and must be reviewed by the Department before final printing. The Buyer will respond within seven (7) days if it can accommodate Seller's request. If space allows for inclusion, but additional postage is required, the Buyer will provide an estimate of the cost of additional postage to be paid by Seller in order to include the insert in the requested monthly billing cycle, or will suggest an alternate start date. Subject to the foregoing, inserts may be included in any bill sent to a Default Service Customer in the Commercial Customer Group, the Industrial Customer Group or the Residential Customer Group taking service pursuant to the Default Service Tariff during the Delivery Term and in the monthly billing cycle selected by Seller. Inserts must be received by the Buyer at least ten (10) days prior to the start date of their inclusion in customer bills.

Bill inserts shall be sent to the following address in a package clearly marked "[Name of Customer Group & Seller] Bill Inserts - Requested Commencement Date of Mailing: [DATE]:

Pitney Bowes Attn: Steve Roy 25 International Drive Windsor, CT 06095

A single copy of each insert, along with the requested commencement date of mailing, shall also be sent to the following:

Mr. Michael J. Hager Vice President, Energy Supply – New England National Grid 55 Bearfoot Road Northborough, MA 01532 Ms. Kathleen Yetman Manager, Billing and Systems National Grid 55 Bearfoot Road Northborough, MA 01532

The Buyer shall be responsible for including no more than the quantity of inserts

provided to it by Seller. The Buyer shall not be responsible for returning to Seller unused inserts unless Seller has made prior arrangements for their return.

#### ARTICLE 4. SALE AND PURCHASE

#### Section 4.1 <u>Provision Delivery and Receipt</u>

Seller shall provide and deliver to the Delivery Point and the Buyer shall receive at the Delivery Point the percentage of the Requirements applicable to each customer group as set forth on Appendix C during the Delivery Term.

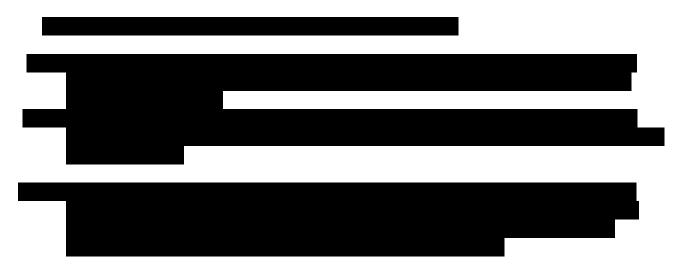
#### Section 4.2 <u>Responsibilities</u>

- (a) The Buyer shall arrange with the ISO for transmission service over the PTF and non-PTF from and after the Delivery Point to the customers' meters. The Buyer shall be responsible for all transmission costs over the PTF and non-PTF from the Delivery Point to the meters of the Buyer's customers. Seller shall be responsible for all transmission and distribution costs associated with the delivery of Requirements to and including the Delivery Point except the transmission costs otherwise provided for in this paragraph.
- (b) Seller shall be responsible for all decisions and data submissions associated with the Ownership Share of the Load Assets in ARTICLE 6, Section 6.4 including any bids into the market system to manage these obligations.
- Seller shall be responsible for all present and future obligations, requirements, and (c) costs associated with the Requirements and/or Seller's provision thereof, whether system wide or locational based, including, but not limited to, the real-time load obligations, capacity obligations and/or charges (including, but not limited to, ICAP/UCAP/Locational ICAP/locational unforced capacity, forward capacity market obligations), regulation obligations and/or charges (including any regulation opportunity costs), operating reserve obligations and/or charges (including, but not limited to, (w) any real-time reserve charges, (x) any forward reserve charges, (y) any charges associated with Reserve Constraint Penalty Factors ("RCPFs"), and (z) RMR operating reserve charges other than RMR operating reserve charges that are monthly fixed-cost charges paid to resources pursuant to agreements negotiated under Market Rule 1 Appendix A, Section 6), net commitment period compensation (NCPC) charges (other than RMR NCPC charges that are monthly fixed-cost charges paid to resources pursuant to agreements negotiated under Market Rule 1 Appendix A, Section 6), emergency energy charges, inadvertent energy revenue charges, ISO Schedule 1 charges (other than ISO Schedule 1 charges that are both (i) associated with the Buyer's Regional Network Service and (ii) allocated on the basis of Regional Network Load), ISO Schedule 2 charges, ISO Schedule 3 charges, day-ahead energy market charges, and realtime energy market charges at the nodes, if any, and if none, the zones representing the actual locations of the meters of the Default Service Customers, and any other requirements, market products, expenses and charges imposed by NEPOOL or the ISO, as they may be in effect from time to time related to the provision and/or delivery of Requirements to and including the Delivery Point. Except as otherwise specifically excluded in this paragraph, Seller's responsibility for costs and charges shall be without regard to the manner in which they are allocated by NEPOOL or the ISO.

- (d) Seller shall be responsible for all costs and components thereof of any Locational Marginal Prices to provide Default Service (during the applicable Delivery Term), including its delivery to the Delivery Point. These components include the energy component, loss component, and congestion component.
- (e) Seller shall be responsible for all congestion charges for delivery to the actual meters of Default Service Customers (during the applicable Delivery Term).
- (f) Seller shall notify Buyer within one Business Day of receipt of notice of termination from the ISO or event of default or similar occurrence under the Market Participant Service Agreement.

### ARTICLE 5. AMOUNT, BILLING and PAYMENT





#### Section 5.2 Billing and Payment

- (a) On or before the tenth (10th) day of each month during the term of this Agreement, Seller shall calculate the amount due and payable to Seller pursuant to Section 5.1 with respect to the preceding month (the "Calculation"). Seller shall provide the Calculation to the Buyer and such Calculation shall include sufficient detail for the Buyer to verify its formulation and computation. Calculations under this paragraph shall be subject to recalculation in accordance with Article 6 and shall be subject to adjustment (positive or negative) based upon such recalculation (a "Reconciliation Adjustment"). Seller shall promptly calculate the Reconciliation Adjustment upon receiving data described in Section 6.3 and shall include the adjustment, if any, in the next month's Invoice. A Reconciliation Adjustment based upon a change in the quantity for an earlier month shall be calculated using the applicable Contract Rate for the month in which the Delivered Energy was received.
- (b) Seller shall submit to the Buyer an invoice with such Calculation as provided for in paragraph (a) of this Section (the "Invoice") and the respective amounts due under this Agreement not later than the tenth (10th) day of each month. The Buyer shall pay Seller the amount of the Invoice (including the Reconciliation Adjustment, if any, as a debit or credit) less any amounts disputed in accordance with Section 5.3, on or before the later of (i) the twentieth

(20<sup>th</sup>) day of the month in which the Invoice is issued or (ii) the tenth (10<sup>th</sup>) day after receiving the Invoice (the "Due Date"). Except for amounts disputed in accordance with Section 5.3, if all or any part of the Invoice remains unpaid after the Due Date, interest shall accrue after but not including the Due Date and be payable to Seller on such unpaid amount at the Interest Rate in effect on the Due Date. The Due Date for a Reconciliation Adjustment shall be the Due Date of the Invoice in which it is included.

(c) Each Party shall notify the other Party upon becoming aware of an error in an Invoice, Calculation or Reconciliation Adjustment (whether the amount is paid or not) and Seller shall promptly issue a corrected Invoice. Overpayments shall be returned by the receiving Party upon request or deducted by the receiving Party from subsequent invoices, with interest accrued at the Interest Rate from the date of the receipt of the overpayment until the date paid or deducted.

#### Section 5.3 Challenge to Invoices

Unless otherwise agreed: (i) either Party may challenge, in writing, the accuracy of Calculations, Invoices or Reconciliation Adjustments (or the data utilized in the forgoing) no later than twenty-four (24) months after the Due Date of the Invoice in which the disputed information is contained; (ii) if a Party does not challenge the accuracy within such twenty-four (24) month period, such Invoice shall be binding upon that Party and shall not be subject to challenge. If an Invoice is paid and thereafter the payment or the Invoice on which the payment was based is disputed, upon notice of dispute, the Party receiving payment shall hold the amount in dispute in escrow for the benefit of the prevailing Party until the resolution of such dispute. If any amount in dispute is ultimately determined (under the terms herein) to be due to the other Party, it shall be paid or returned (as the case may be) to the other Party within three (3) Business Days of such determination along with interest accrued at the Interest Rate from the (i) date due and owing in accordance with the Invoice until the date paid or (ii) if the amount was paid and is to be returned, from the date paid, until the date returned.

#### Section 5.4 Taxes, Fees and Levies

Seller shall be obligated to pay all present and future taxes, fees and levies ("Taxes") which may be assessed by any entity upon the Seller's performance under this Agreement including but not limited to the purchase and sale of Requirements and MA New Renewable Generation Certificates to the Buyer. Seller shall pay all Taxes with respect to the Requirements up to the Delivery Point, and the Buyer will pay all Taxes with respect to the Requirements at and after the Delivery Point. All Requirements, including electricity and other related market products delivered hereunder by Seller to the Buyer shall be sales for resale with the Buyer reselling such electricity and products.

#### Section 5.5 Netting and Setoff

Except for security provided pursuant to Section 7.3 (which shall not be considered for purposes of this Section 5.5) and unless otherwise specified in another agreement between the Parties, if the Parties are required to pay an amount on the same date each to the other under this Agreement, or if any costs that are a Party's responsibility under this Agreement are incorrectly or inappropriately charged to the Party by the ISO, such amounts shall be netted, and the Party owing the greater aggregate amount shall pay to the other Party any difference between the amounts owed. Each Party reserves all rights, setoffs, counterclaims and other remedies and

defenses (to the extent not expressly herein or therein waived or denied) that such Party has or to which such Party may be entitled arising from or out of this Agreement. Further, if the Buyer incurs any costs or charges that are the responsibility of Seller under this Agreement, such costs or charges may, at the Buyer's election, be netted against any amount due to Seller under this Agreement.

# ARTICLE 6. QUALITY; LOSSES and QUANTITIES REQUIRED; DETERMINATION AND REPORTING OF HOURLY LOADS

#### Section 6.1 Quality

All electricity shall be delivered to the Buyer in the form of three-phase sixty-hertz alternating current at the Delivery Point.

#### Section 6.2 Losses

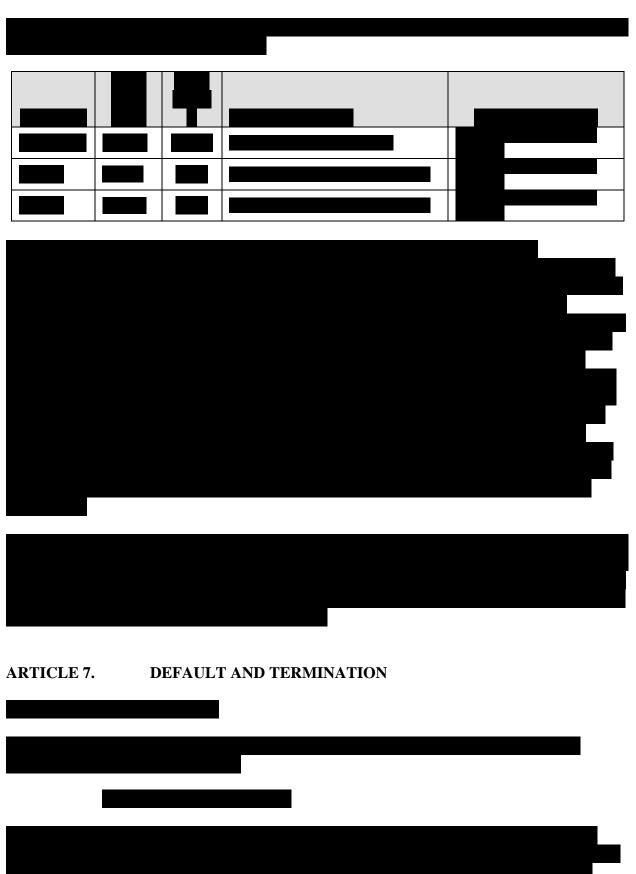
Seller shall be responsible for all transmission and distribution losses and the costs related to such losses and associated with the Requirements, namely, losses from the Delivery Point to the meters of the Default Service Customers. Seller shall provide to the Buyer at the Delivery Point quantities of electricity and ancillary services, capacity and all other market products related thereto to cover such losses from the Delivery Point to the meters of Default Service Customers. The quantities required for this purpose in each hour of a billing period shall be determined in accordance with ISO's and the Buyer's procedures for loss determination.

#### Section 6.3 Determination and Reporting of Hourly Loads

(a) The Buyer will estimate the Delivered Energy for Default Service provided by Seller pursuant to this Agreement based upon average load profiles developed for each of the Buyer's customer classes and the Buyer's actual total hourly load. The Buyer shall report to the ISO and Seller, the estimated Delivered Energy. The Buyer will normally report to the ISO and to Seller Seller's estimated Delivered Energy by 1:00 P.M EPT of the second following Business Day. Appendix A provides a general description of the estimation process that the Buyer will initially employ (the "Estimation Process"). The Buyer shall have the right but not the obligation, in its sole and exclusive judgment, to modify the Estimation Process from time to time, provided that any such modification is designed with the objective of improving the accuracy of the Estimation Process.

Each month, the Buyer shall reconcile the Buyer's estimate of the Delivered Energy based upon the Buyer's meter reads (such meter reads as provided for in the Distribution Service Terms). The reconciliation, including all losses, shall be the adjusted Delivered Energy. The Buyer will normally notify the ISO of any resulting adjustment (debit or credit) to Seller's account for the Load Assets (set forth in Section 6.4) no later than the last day of the third month following the billing month. Appendix A provides a general description of this reconciliation process, which process may be changed by the Buyer from time to time in its sole and exclusive discretion.

Section 6.4 <u>NEPOOL Market System Implementation</u>





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#### ARTICLE 8. NOTICES, REPRESENTATIVES OF THE PARTIES

Section 8.1 Notices

Any notice, demand, or request required or authorized by this Agreement to be given by one Party to another Party shall be in writing. It shall either be sent by facsimile (with receipt confirmed by telephone and electronic transmittal receipt), courier, personally delivered (including overnight delivery service) or mailed, postage prepaid, to the representative of the other Party designated in accordance with this Article. Any such notice, demand, or request shall be deemed to be given (i) when sent by facsimile confirmed by telephone and electronic transmittal receipt, (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service) or (iii) seven (7) days after deposit in the United States mail, if sent by first class mail return receipt requested.

Notices and other communications by Seller to the Buyer shall be addressed to:

Mr. Michael J. Hager Vice President, Energy Supply – New England National Grid 55 Bearfoot Road Northborough, MA 01532 (508) 421-7350 (phone) (508) 421-7335 (fax)

and

Notices concerning Article 7 shall also be sent to:

General Counsel National Grid 25 Research Drive Westborough, MA 01582 (508) 389-9000 (phone) (508) 389-2605 (fax)

Notices and other communications by the Buyer to Seller shall be addressed to:



Any Party may change its representative or address for notices by written notice to the other Party; however such notice shall not be effective until it is received by the other Party.

### Section 8.2 <u>Authority of Representative</u>

The Parties' representatives shall have full authority to act for their respective Party in all matters relating to the performance of this Agreement. Notwithstanding the foregoing, a Party's representative shall not have the authority to amend, modify, or waive any provision of this Agreement unless they are duly authorized officers of their respective entities and such amendment, modification or waiver is made in accordance with Article 17.

### ARTICLE 9. LIABILITY; INDEMNIFICATION; RELATIONSHIP OF PARTIES

### Section 9.1 <u>Limitation on Consequential, Incidental and Indirect Damages</u>

EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 9.2, TO THE FULLEST EXTENT PERMISSIBLE BY LAW, NEITHER THE BUYER NOR SELLER, NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, PARENT OR AFFILIATES, SUCCESSOR OR ASSIGNS, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES, SUCCESSORS, OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR ITS PARENT, SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES (INCLUDING ATTORNEY'S FEES OR LITIGATION COSTS EXCEPT AS EXPRESSLY PROVIDED IN SECTION 15.2 AND IN ACCORDANCE WITH THE LIMITATION THEREUNDER) CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, OR ANY OTHER THEORY OF RECOVERY. THE PROVISIONS OF THIS SECTION SHALL APPLY REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION. CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AGREEMENT.

### Section 9.2 <u>Indemnification</u>

(a) Seller agrees to defend, indemnify and save the Buyer, its officers, directors, employees, agents, successors assigns, and Affiliates and their officers, directors, employees and agents harmless from and against any and all third-party claims, suits, actions or causes of action and any resulting losses, damages, charges, costs or expenses, (including reasonable attorneys' fees and court costs), arising from or in connection with any (a) breach of a representation or warranty or failure to perform any covenant or agreement in this Agreement by Seller, (b) any violation of applicable law, regulation or order by Seller, (c) any act or omission by Seller with respect to this Agreement, first arising, occurring or existing during the term of this Agreement, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement, except to the extent caused by an act of gross negligence or willful misconduct by an officer, director, agent, employee, or Affiliate of the Buyer or its respective successors or assigns.

- (b) The Buyer agrees to defend, indemnify and save Seller, its officers, directors, employees, agents, successor, assigns, and Affiliates and their officers, directors, employees and agents harmless from and against any and all third-party claims, suits, actions or causes of action and any resulting losses, damages, charges, costs or expenses, (including reasonable attorneys' fees and court costs), arising from or in connection with any (a) breach of representation or warranty or failure to perform any covenant or agreement in this Agreement by said Buyer, (b) any violation of applicable law, regulation or order by Buyer, (c) any act or omission by the Buyer, with respect to this Agreement first arising, occurring or existing during the term of this Agreement, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement, except to the extent caused by an act of gross negligence or willful misconduct by an officer, director, agent, employee or Affiliate of Seller or its respective successors or assigns.
- (c) If any Party intends to seek indemnification under this Section from the other Party with respect to any action or claim, the Party seeking indemnification shall give the other Party notice of such claim or action within thirty (30) days of the later of the commencement of, or actual knowledge of, such claim or action; provided, however, that in the event such notice is delivered more than thirty (30) days after the Party seeking indemnification knows of such claim or action, the indemnifying Party shall be relieved of its indemnity hereunder only if and to the extent such indemnifying Party was actually prejudiced by such delay. The Party seeking indemnification shall have the right, at its sole cost and expense, to participate in the defense of any such claim or action. The Party seeking indemnification shall not compromise or settle any such claim or action without the prior consent of the other Party, which consent shall not be unreasonably withheld.

### Section 9.3 <u>Independent Contractor Status</u>

Nothing in this Agreement shall be construed as creating any relationship between the Buyer and Seller other than that of independent contractors for the sale and delivery of Requirements for Default Service.

### ARTICLE 10. ASSIGNMENT

### Section 10.1 General Prohibition Against Assignments

Except as provided in Section 10.2, neither Party shall assign, pledge or otherwise transfer this Agreement or any right or obligation under this Agreement without first obtaining the other Party's written consent, which consent shall not be unreasonably withheld.

### Section 10.2 <u>Exceptions to Prohibition Against Assignments</u>

Either Party may, upon written notice, assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any entity with which or into which such Party shall merge or consolidate or to which such Party shall transfer all or substantially all of its assets, provided that such other entity agrees to be bound by the terms hereof and provided further, that such other entity's creditworthiness is comparable to or higher than that of such Party at the time this Agreement was executed and such Party is not relieved of any obligation or liability hereunder as a result of such assignment

### ARTICLE 11. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective successors and permitted assigns.

### ARTICLE 12. FORCE MAJEURE

- (a) Force Majeure shall include but not be limited to acts of God, earthquakes, fires, floods, storms, strikes, labor disputes, riots, insurrections, acts of war (whether declared or otherwise), terrorism, acts of terrorism, acts of governmental, regulatory or judicial bodies, but if and only to the extent that such event or circumstance (i) directly affects the availability of the transmission or distribution facilities of the New England Transmission System, the Buyer or an Affiliate of the Buyer necessary to provide service to the Buyer's customers which are taking service pursuant to the Default Service Tariff and (ii) it is not within the reasonable control of, or the result of the negligence of, the claiming Party, and which, by the exercise of due diligence, the claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (A) fluctuations in Default Service, (B) the cost to a Party to overcome or avoid, or cause to be avoided, the event or circumstance affecting such Party's performance or (C) events affecting the availability or cost of operating any generating facility.
- (b) To the extent that either Party is prevented by Force Majeure from carrying out, in whole or in part, its obligations hereunder and (i) such Party gives notice and detail of the Force Majeure to the other Party as soon as practicable after the onset of the Force Majeure, including an estimate of its expected duration and the probable impact on the performance of its obligations hereunder; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure, and (iii) the Party claiming Force Majeure uses commercially reasonable efforts to remedy or remove the inability to perform caused by Force Majeure, then the affected Party shall be excused from the performance of its obligations prevented by Force Majeure. However, neither Party shall be required to pay for any obligation the performance of which is excused by Force Majeure. This paragraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party involved in the dispute.
- (c) No obligations of either Party which arose before the Force Majeure occurrence causing the suspension of performance shall be excused as a result of the event of Force Majeure.
- (d) Prior to the resumption of performance suspended as a result of a Force Majeure occurrence, the Party claiming the Force Majeure shall give the other Party written notice of such resumption.

### ARTICLE 13. WAIVERS

No delay or omission in the exercise of any right under this Agreement shall impair any such right or shall be taken, construed or considered as a waiver or relinquishment thereof, but

any such right may be exercised from time to time and as often as may be deemed expedient. The waiver of any single breach or default of any term or condition of this Agreement shall not be deemed to constitute the waiver of any other prior or subsequent breach or default of the Agreement or any other term or condition.

### ARTICLE 14. LAWS AND REGULATIONS

- (a) This Agreement and all rights, obligations, and performances of the Parties hereunder, are subject to all applicable federal and state laws, and to all duly promulgated orders and other duly authorized action of governmental authorities having jurisdiction hereof.
- (b) The rates, terms and conditions contained in this Agreement are not subject to change under Section 205 of the Federal Power Act as that section may be amended or superseded, absent the mutual written agreement of the Parties. Each Party irrevocably waives its rights, including its rights under §§ 205-206 of the Federal Power Act, unilaterally to seek or support a change in the rate(s), charges, classifications, terms or conditions of this Agreement or any other agreements entered into in connection with this Agreement. By this provision, each Party expressly waives its right to seek or support: (i) an order from the Commission finding that the market-based rate(s), charges, classifications, terms or conditions agreed to by the Parties in the Agreement are unjust and unreasonable; or (ii) any refund with respect thereto. Each Party agrees (x) not to make or support such a filing or request, (y) that these covenants and waivers shall be binding notwithstanding any regulatory or market changes that may occur hereafter and (z) that it shall not challenge or support a challenge to the enforceability of the waiver in this Section (b).
- (c) Absent the agreement of all Parties to a proposed change, the standard of review for changes to this Agreement proposed by a non-party or the Commission acting sua sponte shall be the "public interest" standard of review set forth in <u>United Gas Pipe Line Co. v. Mobile Gas Service Corp.</u>, 350 U.S. 332 (1956) and <u>Federal Power Commission v. Sierra Pacific Power Co.</u>, 350 U.S. 348 (1956) (the "<u>Mobile-Sierra</u>" doctrine).
- (d) The Parties agree that, if and to the extent that the Commission adopts a final Mobile-Sierra policy statement in Docket No. PL02-7-000 ("Final Policy Statement") which requires that, in order to exclude application of the just and reasonable standard of review and to mandate application of the public interest standard of review under the Mobile-Sierra doctrine, the Parties must agree to language which varies from that set forth in Article 14(c) then, without further action of either Party, Article 14(c) will be deemed amended to incorporate the specific language in the Final Policy Statement that requires the public interest standard of review.
- (e) Nothing in this Article 14 is intended to modify any Party's right to enforce the terms of this Agreement as written.

### ARTICLE 15. INTERPRETATION, DISPUTE RESOLUTION

Section 15.1 Governing Law

The Agreement shall be governed by and construed and performed in accordance with and the laws of the Commonwealth of Massachusetts, without giving effect to its conflict of laws principles.

### Section 15.2 Dispute Resolution

All disputes between the Buyer and Seller under this Agreement shall be referred, upon notice by one Party to the other Party, to a senior manager of Seller designated by Seller, and a senior manager of the Buyer designated by the Buyer, for resolution on an informal basis as promptly as practicable. In the event the designated senior managers are unable to resolve the dispute within ten (10) days of receipt of the notice, or such other period to which the Parties may jointly agree, such dispute shall be submitted to arbitration and resolved in accordance with the arbitration procedure set forth in this Section. The arbitration shall be conducted in Boston, Massachusetts before a single neutral arbitrator mutually agreed to and appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, Seller and the Buyer shall each choose one arbitrator, who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within ten (10) days select a third arbitrator to act as chairman of the arbitration panel. In either case, the arbitrator(s) shall be knowledgeable and have at least two (2) years experience in electric utility matters, including wholesale power transactions and power market issues, and shall not have any current business relationships with either Party, and shall not hold a significant amount of stock in either Party, or a witness for either Party and shall not have a direct or indirect interest in any Party or the subject matter of the arbitration. If a panel of arbitrators, all of their decisions shall be by majority vote. The arbitrator(s) shall afford each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall generally conduct the arbitration in accordance with the then-current arbitration rules of the CPR Institute for Dispute Resolution (formerly known as the Center for Public Resources), unless otherwise mutually agreed by the Parties. There shall be no formal discovery conducted in connection with the arbitration unless otherwise mutually agreed by the Parties; provided, however, that the Parties shall exchange witness lists and copies of any exhibits that they intend to utilize in their direct presentations at any hearing before the arbitrator(s) at least ten (10) days prior to such hearing, along with any other information or documents specifically requested by the arbitrator(s) prior to the hearing. Any offer made and the details of any negotiations to resolve the dispute shall not be admissible in the arbitration or otherwise. Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of his, her or their appointment and shall notify the Parties in writing of such decision and the reasons therefore, and shall make an award apportioning the payment of the costs and expenses of arbitration among the Parties; provided, however, that each Party shall bear the costs and expenses of its own attorneys, expert witnesses and consultants unless the arbitrator(s), based upon a determination of good cause, awards attorneys fees and legal and other costs to the prevailing Party. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change the Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction, subject expressly to Section 15.3. The decision of the arbitrator(s) may be appealed solely on the grounds that the conduct of the arbitrator(s), or the decision itself, violated the standards set forth in the Federal Arbitration Act and/or the Administrative Dispute Resolution Act. Nothing in this paragraph shall impair the ability of a Party to exercise any right or remedy it has under this Agreement, including those in Article 7. To the fullest extent permitted by law, any arbitration proceeding and the arbitrator's award shall be maintained in confidence by the Parties; provided, however, that either Party, or any of its Affiliates, may provide information regarding the arbitration without limitation to any

regulatory agency requesting or requiring such information or to a court in a proceeding to confirm, appeal (as such appeal is limited hereby) or enforce the award; provided, further, that any such provision of information must include a request for confidential treatment.

### Section 15.3 Venue; Waiver of Jury Trial

Each Party hereto irrevocably (i) submits to the exclusive jurisdiction of the federal and state courts located in the Commonwealth of Massachusetts; (ii) waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and (iii) waives any claim that such proceedings have been brought in an inconvenient forum. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT.

### ARTICLE 16. SEVERABILITY

Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining provisions and lawful obligations that arise under this Agreement. If any provision of this Agreement, or the application thereof to any Party or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Agreement and the application of such provision or circumstances shall not be affected by such invalidity or unenforceability.

### ARTICLE 17. MODIFICATIONS

No modification or amendment of this Agreement will be binding on any Party unless it is in writing and signed by both Parties.

### ARTICLE 18. ENTIRE AGREEMENT

This Agreement, including the Appendices, the tariffs and agreements referred to herein or therein, embody the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or referred to herein or therein. It is expressly acknowledged and agreed that there are no restrictions, promises, representations, warranties, covenants or undertakings contained in any material provided or otherwise made available by the Seller or the Buyer to each other. This Agreement supersedes all prior agreements and understandings between the Parties with respect to the transactions contemplated hereby.

### ARTICLE 19. COUNTERPARTS

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

### ARTICLE 20. INTERPRETATION; CONSTRUCTION

The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement. For purposes of this Agreement, the term "including" shall mean "including, without limitation". The Parties acknowledge that, each Party and its counsel have reviewed and or revised this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement, and it is the result of joint discussion and negotiation.

### ARTICLE 21. REPRESENTATIONS; WARRANTIES AND COVENANTS

Each Party represents to the other Party, upon execution and continuing throughout the term of this Agreement, as follows:

- (a) It is duly organized in the form of business entity set forth in the first paragraph of this Agreement, validly existing and in good standing under the laws of its state of its organization and has all requisite power and authority to carry on its business as is now being conducted, including all regulatory authorizations as necessary for it to legally perform its obligations hereunder.
- (b) It has full power and authority to execute and deliver this Agreement and to consummate and perform the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by it, and, assuming that this Agreement constitutes a valid and binding agreement of the other Party, constitutes its valid and binding agreement, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.
- (c) Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, or the terms of any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, concession, contract, lease or other instrument to which it is bound, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.
- (d) No declaration, filing with, notice to, or authorization, permit, consent or approval of any governmental authority is required for the execution and delivery of this Agreement by it or the performance by it of its obligations hereunder, other than such declarations, filings, registrations, notices, authorizations, permits, consents or approvals which, if not obtained or made, will not, in the aggregate, have a Material Adverse Effect.
- (e) Neither the execution and delivery of this Agreement by it will nor the performance by it of its obligations under this Agreement will or does (i) conflict with or result in any breach of any provision of its Governing Documents, (ii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which it or any of its subsidiaries is a party or by which it or any of its subsidiaries

is bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which, in the aggregate, would not have a Material Adverse Effect; or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to it, which violation would have a Material Adverse Effect.

- (f) There are no claims, actions, proceedings or investigations pending or, to its knowledge, threatened against or relating to it before any governmental authority acting in an adjudicative capacity relating to the transactions contemplated hereby that could have a Material Adverse Effect. It is not subject to any outstanding judgment, rule, order, writ, injunction or decree of any court or governmental authority which, individually or in the aggregate, would create a Material Adverse Effect.
- (g) There are no bankruptcy, insolvency, reorganization, receivership or other similar proceedings pending or being contemplated by it, or of its knowledge threatened against it.
- (h) With respect to Seller, (i) it and the ISO have fully executed a Market Participant Service Agreement ("Seller's MPSA"), and it has been approved by the Commission in accordance with Subsection 7.1 of the MPSA with the ISO and (ii) the ISO has not filed with the Commission a notice of termination of Seller's MPSA.
- (i) It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party hereto, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

### ARTICLE 22. CONSENTS AND APPROVALS

The Parties shall cooperate so that each Party may take such actions as necessary and required for the other Party to effectuate and comply with this Agreement including to (i) promptly prepare and file all necessary documentation, (ii) effect all necessary applications, notices, petitions and filings and execute all agreements and documents, and (iii) use all commercially reasonable efforts to obtain all necessary consents, approvals and authorizations of all other entities, in the case of each of the foregoing clauses (i), (ii) and (iii), necessary or advisable to consummate the transactions contemplated by this Agreement. The Buyer shall have the right to review and approve in advance all characterizations of the information relating to the transactions contemplated by this Agreement which appear in any filing, press release or public announcement made in connection with the transactions contemplated hereby.

### ARTICLE 23. CONFIDENTIALITY

Neither Seller nor the Buyer shall provide copies of Section 5.1, Section 6.4, Appendices C and D or disclose the contents or terms thereof (the "Confidential Terms") to any third party without the prior written consent of the other Party; provided, however, that either Party may provide a copy of the Confidential Terms, in whole or in part to (1) any regulatory agency or governmental authority with jurisdictional interest requesting and/or requiring such Confidential Terms, or in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding, provided that in the case of a disclosure pursuant to the foregoing, such disclosure must include a

request for confidential treatment of the Confidential Terms, and (2) an Affiliate if related to the Party's performance of its obligations hereunder, provided that such Affiliate agrees to treat the Confidential Terms as confidential in accordance with this clause.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement on their behalf as of the date first above written.

MASSACHUSETTS ELECTRIC COMPANY
Name (print): Michael J. Hager
Title: Authorized Signatory
NANTUCKET ELECTRIC COMPANY
Name (print): Michael J. Hager
Title: Authorized Signatory
Name (print):
Title:

## APPENDIX A ESTIMATION OF SELLER HOURLY LOADS

### Overview

Generating units operated by suppliers are dispatched by the power pool to meet the region's electrical requirements reliably, and at the lowest possible cost. As a result, a supplier's electricity production may not match the demand of its customers. In each hour some suppliers with low cost production units or that contract for the output of such units are net sellers of electricity to the pool, while other suppliers are purchasing power from the pool to meet the demand of their customers. To determine the extent to which suppliers are net buyers or sellers on an hourly basis, it is necessary to estimate the hourly aggregate demand for all of the customers served by each supplier. The Buyer will estimate Seller's Default Service load obligations within the Buyer's service territory and report the hourly results to the ISO on a daily basis.

The estimation process is a cost-effective approach to producing results that are reliable, unbiased and reasonably accurate. The hourly load estimates will be based on rate class load profiles, which will be developed from statistically designed samples. Each day, the class load shapes will be scaled to the population of customers served by each supplier. In cases where telemetered data on individual customers is available, it will be used in place of the estimated shapes. On a monthly basis, the estimates will be refined by incorporating actual usage data obtained from meter readings. In both processes, the sum of all suppliers' estimated loads will match the total load delivered into the distribution system. A description of the estimation process follows.

### Daily Estimation of Suppliers' Own Load

The daily process estimates the hourly load for each supplier for the previous day. The following is an outline of this process:

- Select a proxy date from the previous year with characteristics which best match the day
  for which the hourly demand estimates are being produced. Extract class load shapes for
  the selected proxy date from the load research database.
- Scale the class load shapes appropriately for each individual customer based on the usage level of the customer relative to the class average usage level.
- Calculate a factor for each customer which reflects their relative usage level and includes an adjustment for losses ("load adjustment factor"). Aggregate the load adjustment factors across the customers served by each supplier in each class.
- Produce a preliminary estimate of each supplier's hourly loads by combining the proxy
  day class load shapes with the supplier's total load adjustment factors. Aggregate the
  loads across the classes for each supplier.

- Adjust the preliminary hourly supplier estimates so that their sum is equal to the Buyer's actual hourly metered loads (as metered at the point of delivery to the distribution system) by allocating any differences to suppliers in proportion to their estimated load.
- Adjust the hourly supplier estimates to include transmission losses within the Buyer's transmission system.
- Submit the hourly loads to the ISO.

After the Buyer has submitted the supplier hourly loads, the ISO will allocate PTF losses to the supplier's account during the settlement process.

### **Monthly Reconciliation Process**

The monthly process will improve the estimates of supplier loads by incorporating the most recent customer usage information, which will be available after the monthly meter readings are processed. The actual customer meter readings, as well as actual interval data for the largest customers, are used to re-estimate all of the days in the calendar month being reconciled. Updates to customers' account status and supplier assignments that may have been missed during the daily processing (due to timing) are included. The resulting hourly supplier load estimates for all the days in the month are reported and used by the ISO as the basis for the monthly resettlement.

### APPENDIX B FORM OF GUARANTY

### Guaranty

This Guaranty (this "Guaranty"), dated effective as of June 16, 2006 (the "Effective Date"), is made and entered into by ("Guarantor").

### WITNESSETH:

WHEREAS, Massachusetts Electric Company and Nantucket Electric Company ("the Buyer") and

("Seller") and an affiliate of Guarantor, have entered into the Power Supply Agreement for Default Service dated as of June 14, 2006 for the Delivery Term of August 1, 2006 – October 31, 2006 (as such agreement may be amended and modified by the Buyer and Seller from time to time, the "Agreement"); and

WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Seller and the Buyer;

NOW THEREFORE, in consideration of the Buyer entering into the Agreement, Guarantor hereby covenants and agrees as follows:

- 1) GUARANTY. Subject to the provisions hereof, Guarantor hereby irrevocably and unconditionally guarantees the full payment when due of the obligations of Seller that are now due or may hereafter become due and payable to the Buyer under the Agreement (the "Obligations"). This Guaranty shall constitute a guarantee of payment and not of collection. The liability of Guarantor under this Guaranty shall be specifically limited to an aggregate \$11,000,000 for (i) payments expressly required to be made under the Agreement (even if such payments are or are deemed to be damages) as well as (ii) costs of collection and enforcement of this Guaranty (including attorney's fees) to the extent reasonably and actually incurred by the Buyer (all of which such costs of collection and enforcement shall be subject to the limitation that a court, having jurisdiction over such mater, has ruled that Buyer is owed pursuant to this Guaranty) but in no event shall Guarantor be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive or tort damages, or, except to the extent specifically provided in the Agreement, any other damages.
- 2) <u>DEMANDS AND NOTICE</u>. Upon the occurrence and during the continuance of an Event of Default or termination, as may be defined in the Agreement, if Seller fails or refuses to perform or pay any Obligations and the Buyer elects to exercise its rights under this Guaranty, the Buyer shall make a demand upon Guarantor (hereinafter referred to as a "Demand"). A Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due, with a specific statement that the Buyer is calling upon Guarantor to pay under this Guaranty. A Demand satisfying the foregoing requirements shall be required with respect to Obligations before Guarantor is required to pay such Obligations hereunder and shall be deemed sufficient notice to Guarantor that it must pay the Obligations after its receipt of the Demand. A single written Demand shall be effective as to any specific default during the continuance of such default, until Seller or Guarantor has cured such default, and additional written

demands concerning such default shall not be required until such default is cured. As used herein, the term "Business Day" shall mean a day on which commercial banks or financial institutions are open for business in the State of New York.

- 3) <u>REPRESENTATIONS AND WARRANTIES</u>. Guarantor represents and warrants that:
- 3.1 it is a corporation duly organized and validly existing and in good standing under the laws of the State of Indiana and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
- 3.2 the execution, delivery and performance of this Guaranty do not and will not (with or without the lapse of time, the giving of notice or both), contravene, conflict with or result in a breach of or default under any provision of its constitution or any writ, order, judgment, law, rule or regulation to which it is a party or is subject or by which it is bound; and
- 3.3 no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and
- 3.4 this Guaranty, when executed and delivered, will constitute a valid and legally binding agreement of Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.
- 4) <u>SETOFFS AND COUNTERCLAIMS</u>. Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Seller or any other affiliate of Guarantor is or may be entitled to arising from or out of the Agreement or otherwise, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of Seller, the lack of power or authority of Seller to enter into, amend and/or perform the Agreement, or waiver or consent with respect to any provision thereof, or a claim as to the Agreement's validity regularity or enforceability, or any similar circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor generally.
- 5) <u>AMENDMENT OF GUARANTY</u>. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and the Buyer.
- 6) WAIVER; TERMINATION. Except as required in Section 2 above, Guarantor hereby waives (a) notice of acceptance of this Guaranty; (b) presentment, demand and notice of dishonor concerning the liabilities of Guarantor; and (c) any right to require that any action or proceeding be brought against Seller or any other person, or to require that the Buyer exhaust its remedies against Seller or seek enforcement of any performance against Seller or any other person, or against any collateral pledged by Seller or any other person liable for payment or performance of the Obligations, prior to any action against Guarantor under the terms hereof. Buyer shall not be obligated to file any claim relating to the Obligations in the event that Seller becomes subject to

a bankruptcy, reorganization or similar proceeding, and the failure of the Buyer to so file shall not affect the Guarantor's obligations hereunder.

Except as to applicable statutes of limitation, no delay of the Buyer in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder.

Guarantor consents to the renewal, compromise, extension, acceleration or other changes including in the time of payment of and other changes in the terms of the Obligations, or any part thereof and amendments thereto, or any changes and modifications to the terms of the Agreement or waivers there under.

Guarantor shall not be discharged or released from its obligations hereunder by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Seller or by any defense which Seller may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by the Buyer as a result of the bankruptcy of Seller, or otherwise, all as though such payments had not been made.

This Guaranty and the Guarantor's obligations hereunder shall remain in effect for the term of the Agreement.

<u>NOTICE</u>. Any Demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by telegram or facsimile, as follows:

### To the Buyer:

To Guarantor:

Vice President-Energy Supply New England National Grid 55 Bearfoot Road Northborough, MA 01532

Fax No.: (508) 421-7335 Fax No.: Phone No.: (518) 421-7350 Phone No.:

Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by telegram shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. Notice given by facsimile shall be effective upon (i) actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours and (ii) confirmation of receipt by telephone. All Notices by telegram or facsimile shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which Notice is to be given to it by giving notice in accordance with the requirements of this Section.

MISCELLANEOUS. This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws.

This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by the Buyer and its successors and permitted assigns. The Guarantor may not assign this Guaranty in part or in whole without the prior written consent of the Buyer. The Buyer may not assign its rights or benefits under this Guaranty in part or in whole except (i) with the prior written consent of the Guarantor, or (ii) pursuant to a permitted assignment of Agreement ("Assigned Agreement"), in which case the assignee will succeed to the rights of the Buyer hereunder arising after the date of such assignment. The Guarantor's liability hereunder with respect to any and all such Assigned Agreement, together with any other liability of the Guarantor hereunder, will in all cases be subject to the Guarantor's maximum aggregate liability set forth in Section 1(a) herein. Neither the Guarantor nor the Buyer will unreasonably withhold or delay consent to assignment.

This Guaranty embodies the entire agreement and understanding between Guarantor and the Buyer and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof.

Time is of the essence of this Guaranty. The remedies provided to the Buyer in this Guaranty are cumulative and not exclusive of any other remedies provided by law.

Words importing the singular number hereunder shall include the plural number and vice versa and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on June 16, 2006, but it is effective as of the Effective Date.

BY:
NAME:
TITLE:

### APPENDIX C

### Buyer's Default Service Requirements Matrix By Customer Group, Load Responsibility, SMD Load Zone and Applicable Period

<b>Customer Group</b>	SMD Load Zone	Load Responsibility	Commencement Date	Conclusion Date

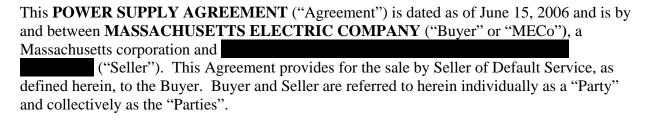
# APPENDIX D Contract Rate

By Customer Group, Load Zone and Month of Service, \$/MWh

<b>Customer Group</b>	August 2006	September 2006	October 2006

### REDACTED COPY

#### MASSACHUSETTS POWER SUPPLY AGREEMENT



### ARTICLE 1. <u>BASIC UNDERSTANDINGS</u>

Seller, in response to a Request for Proposal dated May 12, 2006 issued by the Buyer, has been selected to be the supplier of firm, load-following power to meet the Buyer's Default Service Requirements as defined in the Default Service Requirements Matrix found in Appendix C. This Agreement sets forth the terms under which Seller will supply Default Service to Buyer for the period commencing with the beginning of the HE 0100 EPT on the Commencement Date in Appendix C and continuing through and including the end of the HE 2400 EPT on Conclusion Date in Appendix C (the "Delivery Term(s)").

### ARTICLE 2. <u>DEFINITIONS</u>

As used in this Agreement, the following terms shall have the meanings specified in this Article. In addition, except as otherwise expressly provided, terms with initial capitalization used in this Agreement and not defined herein shall have the meaning as defined in the NEPOOL Rules.

<u>Affiliate</u> means, with respect to any Party, any entity (other than a person) that, directly or indirectly, controls, or is controlled by, or is under common control with, such Party. For this purpose, "control" means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

<u>Aggregate RPS Requirement</u> means the total of the RPS Requirement for each calendar month during the Delivery Term.

<u>Alternative Compliance Payment Rate means</u> the value as published by the Massachusetts Division of Energy Resources in accordance with 225 CMR 14.08 (4) (a) 2.

<u>Business Day</u> means a 24-hour period ending at 5:00 p.m. EPT, other than Saturday, Sunday and any day which is a legal holiday or a day on which banking institutions in Boston, Massachusetts are authorized by law or other governmental action to close.

**Buyer** means Massachusetts Electric Company its successors, assigns, employees, agents and authorized representatives.

**Buyer's System** means the electrical transmission and distribution system of the Buyer and the electrical transmission and distribution system of any Affiliate of the Buyer.

<u>Buyer's Service Territory</u> means the geographic area served by Massachusetts Electric Company including the service territory formerly served by Eastern Edison Company which has been merged with and into Massachusetts Electric Company.

<u>Commencement Date</u> means, with respect to a customer group in the NEMA Load Zone, the SEMA Load Zone or the WCMA Load Zone, the period at HE 0100 EPT on the date set forth for the customer group in Appendix C.

<u>Commercial Contract Rate</u> means the value as set forth in Appendix D for the SEMA Load Zone, NEMA Load Zone and WCMA Load Zone, as applicable to a month in the Delivery Term.

<u>Commercial Customer Group</u> means the Buyer's customers in the Rate G-1, Rate S-2, Rate S-3, Rate S-5 and Rate S-20 retail rate classes (the "Commercial Rate Classes"), or such other rate classes as may be added from time to time in the SEMA Load Zone, NEMA Load Zone and WCMA Load Zone, as applicable during the Delivery Term, provided that such Commercial Rate Classes shall be comprised of customers previously in one of the Commercial Rate Classes.

**Commission** means the Federal Energy Regulatory Commission, or its successor.

<u>Competitive Supplier Terms</u> means Mass. Electric's Model Terms and Conditions for Competitive Suppliers, M.D.T.E. No. 1063, as may be amended from time to time.

<u>Conclusion Date</u> means, with respect to a customer group in the NEMA Load Zone, the SEMA Load Zone or the WCMA Load Zone, the end of the HE 2400 EPT on the date set forth for the customer group in Appendix C.

<u>Credit Rating</u> means (i) the lower of the ratings assigned to an entity's unsecured, senior long-term debt obligations (not supported by third party credit enhancements) by S&P and Moody's, (ii) in the event the entity does not have a rating for its senior unsecured long-term debt, the lower of the rating assigned to the entity as an issuer rating by S&P and Moody's, or the rating assigned to the entity as an issuer rating by any other rating agency agreed to by both Parties in each Party's sole and exclusive judgment.

<u>Customer Disconnection Date</u> means the date when a Default Service Customer is disconnected from service, as determined by the Buyer in accordance with the Distribution Service Terms.

<u>Customer Termination Date</u> means the date when a Default Service Customer ceases to take service under the Default Service Tariff, each date as determined by the Buyer in accordance with the Distribution Service Terms.

<u>Default Service</u> means the provision of Requirements by Seller at the Delivery Point to the Buyer to meet all needs of Default Service Customers.

<u>Default Service Customer(s)</u> means the retail customer(s) in the Commercial Customer Group, the Industrial Customer Group and the Residential Customer Group of the Buyer taking service pursuant to the Default Service Tariff during the applicable Delivery Term.

**<u>Default Service Tariff</u>** means Buyer's Tariff for Default Service, M.D.T.E. No. 1041, as may be amended from time to time and approved by the Department.

<u>Delivered Energy</u> means the quantity of energy, expressed in megawatt-hours, provided by Seller under the terms of this Agreement. This quantity shall be the sum of the quantity of energy reported to the ISO by the Buyer for each of the Load Assets identified in Section 6.4, with such quantity determined by the Buyer in accordance with Section 6.3 of this Agreement. Such quantity shall not include any allocation of PTF losses (which the ISO may assess to Seller in relation to such energy), but shall include transmission and distribution losses on the Buyer's System from the Delivery Point to the meters of Default Service Customers.

Delivery Point means for each Load Asset identified in or in accordance with Section 6.4 (i) the Nodes at which the Real-Time Load Obligations are established in the ISO Settlement Power System Model for the registered Load Assets representing the physical loads of Default Service Customers for the Delivery Term for such customers, identified by the Load Asset ("Loads With Nodes"), for any period and in any location in which there are Loads With Nodes and the ISO requires use of Nodes for Real-Time Load Obligations, or (ii) the Load Zones at which the Real-Time Load Obligations are established in the ISO Settlement Power System Model for the Load Assets representing the physical loads of Default Service Customers for the Delivery Term for such customers, identified by the Load Asset ("Loads with Zones") if (a) the ISO does not require use of Nodes for Real-Time Load Obligations and (b) the use of Loads with Zones in a calculation of ISO settlement charges and costs yields the same mathematical result as a calculation thereof using Loads with Nodes; or (iii) in the event of neither (i) nor (ii), Loads with Nodes and, in any location in which there are no Loads with Nodes, Loads with Zones.

**<u>Delivery Term(s)</u>** means the definition set forth in Article 1.

**Department** means the Massachusetts Department of Telecommunications and Energy.

<u>Distribution Service Terms</u> means Mass. Electric's Terms and Conditions for Distribution Service, M.D.T.E. No. 997, as may be amended from time to time and approved by the Department.

**EPT** means Eastern Prevailing Time.

Governing Documents means, with respect to any particular entity, (a) if a corporation, the (i) articles of organization, articles of incorporation or certificate of incorporation and (ii) the bylaws; (b) if a general partnership, the partnership agreement and any statement of partnership; (c) if a limited partnership, the limited partnership agreement and the certificate of limited partnership; (d) if a limited liability company, the articles or certificate of organization or formation and operating agreement; (e) if another type of entity, any other charter or similar document adopted or filed in connection with the creation, formation or organization of such entity; (f) all equity holders' agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of any entity or relating to the rights, duties and

obligations of the equity holders of any entity; and (g) any amendment or supplement to any of the foregoing.

<u>Industrial Contract Rate</u> means the value as set forth in Appendix D for the SEMA Load Zone, NEMA Load Zone and WCMA Load Zone, as applicable to a month in the Delivery Term.

<u>Industrial Customer Group</u> means the Buyer's customers in the Rate G-2 and Rate G-3 retail rate classes (the "Industrial Rate Classes"), or such other rate classes as may be added from time to time in the SEMA Load Zone, NEMA Load Zone and WCMA Load Zone, as applicable during the Delivery Term, provided that such Industrial Rate Classes shall be comprised of customers previously in one of the Industrial Rate Classes or such customer would have qualified for one of the Industrial Rate Classes.

<u>Initiation Date</u> means the date a retail customer of the Buyer begins taking service pursuant to the Default Service Tariff as determined by the Buyer in accordance with the Distribution Service Terms.

<u>Interest Rate</u> means, for any date, the lesser of (a) Bank Prime loan interest rate set forth in the weekly statistical release designated as No. 15 (519) or any successor publication published by the Board of Governors of the Federal Reserve System, plus two percent (2%) and (b) the maximum rate permitted by applicable law.

Investment Grade means (i) if any entity has a Credit Rating from both S&P and Moody's then, a Credit Rating from S&P equal to or better than "BBB-" and a Credit Rating from Moody's equal to or better than "Baa3"; or (ii) if an entity has a Credit Rating from only one of S&P and Moody's, then a Credit Rating from S&P equal to or better than "BBB-" or a Credit Rating from Moody's equal to or better than "Baa3 or (iii) if the Parties have mutually agreed in writing on an additional or alternative rating agency, then a credit rating equal to or better than that mutually agreed to by the Parties in each Party's sole and exclusive judgment.

**ISO** means ISO New England Inc., authorized by the Commission to exercise for New England the functions required pursuant to the Commission's Order No. 2000 (and its progeny) and the Commission's regulations, and any successor organization (including but not limited to a Regional Transmission Organization.).

<u>ISO Tariff</u> means the ISO New England Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, as amended, modified, superseded and supplemented from time to time, and including the Market Rules and Procedures.

<u>ISO New England Operating Documents</u> means the ISO Tariff and the ISO New England Operating Procedures, as amended, modified, superseded and supplemented from time to time.

**Locational Marginal Pricing** means as set forth in the Market Rules and Procedures.

<u>Market Rules and Procedures</u> means the Market Rules, Manuals and Procedures adopted by the ISO and/or NEPOOL, as may be amended from time to time, and as administered by the ISO to govern the operation of the NEPOOL markets.

<u>MA New Renewable Generation Certificate</u> means certain electronic NE-GIS Certificates produced by NE-GIS that identify generation attributes of each MWh accounted for in the NE-

GIS from a new renewable generation unit, that represent and comply with New Renewable Generation Attributes and conform to the Eligibility Criteria set forth in applicable Massachusetts regulations, and shall represent title to and claim over all environmental attributes associated with the specified MWh of generation from the generation unit claiming New Renewable Generation Attributes.

Material Adverse Effect means, with respect to a Party, any change in or effect on such Party after the date of this Agreement that is materially adverse to the transactions contemplated hereby, excluding any change or effect resulting from (a) changes in the international, national, regional or local wholesale or retail markets for electric power; (b) changes in the international, national, regional or local markets for any fuel; (c) changes in the North American, national, regional or local electric transmission or distribution systems; and (d) any action or inaction by a governmental authority, but in any such case not affecting the Parties or the transactions contemplated hereby in any manner or degree significantly different from others in the industry as a whole.

<u>Moody's</u> means Moody's Investors Service, its successors and assigns.

**MWh** means Megawatt-hour.

<u>NE-GIS</u> means the NEPOOL Generation Information System, which includes a generation information database and certificate system, operated by NEPOOL, its designee or successor entity, that accounts for generation attributes of electricity consumed within New England.

<u>NE-GIS Certificates</u> means a document produced by the NE-GIS that identifies the relevant generation attributes of each MWh accounted for in the NE-GIS from a generation unit.

<u>NEMA Load Zone</u> means the Northeast Massachusetts Reliability Region as defined in the NEPOOL Rules.

**NEPOOL** means the New England Power Pool, or its successor.

**NEPOOL Agreement** means the Second Restated New England Power Pool Agreement dated as of February 1, 2005, as amended or accepted by the Commission and as may be amended, modified, superseded, supplemented and/or restated from time to time.

NEPOOL Rules means all rules adopted by NEPOOL or the ISO, as such rules may be amended, modified, supplemented or superseded and restated from time to time, including but not limited to, the NEPOOL Agreement, the ISO Tariff, the ISO New England Operating Documents, the Transmission Operating Agreement, the Participants Agreement, the NEPOOL Manuals, and the NEPOOL Operating Procedures, as amended, superseded or restated from time to time.

<u>Net Worth</u> means total assets, exclusive of intangible assets, less total liabilities, as reflected on the most recent balance sheet prepared by a certified public accountant as part of a certified financial statement in accordance with generally accepted accounting principles consistently applied in the business sector of the Seller.

<u>New Renewable Generation Attributes</u> means as defined in Section 14.02 of the Renewable Energy Portfolio Standard.

**PTF** means facilities categorized as Pool Transmission Facilities under the ISO Tariff.

Renewable Energy Portfolio Standard means the regulations promulgated pursuant to M.G.L. c. 25A, § 11F that require all retail electricity suppliers to end-use customers in Massachusetts to provide a minimum percentage of electricity sales to contain New Renewable Generation Attributes, which are derived from certain renewable energy generating resources beginning on January 1, 2003, as more explicitly provided for in 225 CMR 14.00.

<u>Requirements</u> means all electric generation and/or market purchases and delivery, to the Delivery Point, of the electric capacity, energy, ancillary services, operating reserves (including forward reserves) and all other market products required by the Buyer to provide kilowatt-hours to meet the needs of Default Service Customers to the Delivery Term.

**RPS Requirement** means (a) the product of (i) Delivered Energy in a calendar month for Default Service in calendar year 2006 and (ii) 0.025, rounded up to the whole MWh.

<u>Residential Customer Rate</u> means the value as set forth in Appendix D for in the SEMA Load Zone, NEMA Load Zone and WCMA Load Zone, as applicable to a month in the Delivery Term.

<u>Residential Customer Group</u> means the Buyer's customers in the Rate R-1, Rate R-2, Rate R-4 and Rate-E retail rate classes ("Residential Rate Classes"), or such other rate classes as may be added from time to time in the SEMA Load Zone, NEMA Load Zone and WCMA Load Zone, as applicable during the Delivery Term, provided that such Residential Rate Classes shall be comprised of customers previously in one of the Residential Rate Classes or such customer would have qualified for one of the Residential Rate Classes.

**SEMA Load Zone** means the Southeast Massachusetts Reliability Region as defined in the NEPOOL Rules.

**S&P** means Standard & Poor's Rating Group, its successors and assigns.

<u>WCMA Load Zone</u> means the Western Central Massachusetts Reliability Region as defined in the NEPOOL Rules.

# ARTICLE 3. TERM, SERVICE PROVISIONS AND REGISTRATION REQUIREMENTS

Section 3.1 <u>Effective Date; Condition Precedent; Filing Obligation; Term</u>

(a) This Agreement shall be binding on the Parties upon execution by all Parties (such date the "Effective Date"). Promptly after execution by both Parties, Buyer shall submit this Agreement to the Department for its approval. The Parties performance of Sections 3.2 through 6.4 are subject to the occurrence, on or before the fifth Business Day after (but not including) the Buyer's submission of the Agreement to the Department (the "Fifth Day"), of either (a) approval by the Department of this Agreement or (b) the Department taking no action

on the Buyer's request for approval of the Agreement. If the Department issues an order denying Buyer's request to approve the Agreement as executed (including by way of an order using terms of similar effect to signify its disapproval or rejection of the Agreement or of the request for approval of the Agreement) on or before the Fifth Day (a "Department Denial"), then this Agreement shall be null and void and of no further force and effect, and neither Party shall have any obligation whatsoever to the other Party, and such a voiding of the Agreement and the Department Denial shall not be a default or constitute an Event of Default by either Party.

- (b) In the event that on or before the Fifth Day the Department approves the Agreement conditioned upon the amendment of the Agreement to incorporate a new term or amend an existing term, each Party shall independently determine whether it is willing to amend the Agreement to incorporate the Department's condition. (The date that the Department issues such order shall be the "Order Date".) As soon as practicable, Buyer shall immediately provide a copy of the Order to Seller by facsimile or electronic mail. If either (a) a Party notifies the other Party(ies) (in accordance Section 8.1) at any time prior to HE 1700 local prevailing time in Boston on the date that is two (2) Business Days after (but not including) the Order Date that it will not amend the Agreement to incorporate the Department's condition or (b) the Parties have not executed such amendment on or before HE 1700 local prevailing time in Boston on the date that is three (3) Business Days after (but not including) the Order Date, this Agreement shall be null and void and of no further force and effect and neither Party shall have any obligation whatsoever to the other Party, and the provision of such notice shall not be a default or constitute an Event of Default.
- (c) As of the expiration of this Agreement or, if earlier, its termination, the Parties shall no longer be bound by the terms and provisions hereof, except (a) to the extent necessary to enforce the rights and obligations of the Parties arising under this Agreement before such expiration or termination and (b) the obligations of the Parties hereunder with respect to audit rights, remedies for default, damages claims, indemnification and defense of claims shall survive the termination or expiration of this Agreement to the full extent necessary for their enforcement and the protection of the Party in whose favor they run, subject to any time limits specifically set forth in this Agreement.

### Section 3.2 <u>Commencement of Supply</u>

- (a) Beginning as of the Commencement Date applicable to the customer group set forth on Appendix C, Seller shall provide Requirements to the Buyer. For purposes of certainty: Seller's obligations on the Commencement Date shall be to provide Requirements for all Default Service Customers taking service as of and including the Commencement Date.
- (b) With respect to each person or entity that becomes a Default Service Customer subsequent to the Commencement Date, Seller shall provide Requirements to the Buyer to meet the needs of the Default Service Customer(s) as of and including the Initiation Date for such customer initiating such service during the Delivery Term.
- (c) If Seller elects to receive electronic notification as provided in Section 3.7, the Buyer shall provide to Seller a notice of Initiation Date via electronic file transfer and in a format specified by the Buyer. Each notice of Initiation Date shall include the account number, the date Seller's service to the Buyer is to begin for a Default Service Customer and the customer's rate class.

### Section 3.3 Termination and Conclusion of Supply

- (a) With respect to each Default Service Customer that terminates Default Service during the Delivery Term, Seller shall provide Requirements to the Buyer for such customer on the Customer Termination Date but shall not provide Requirements for such customer after the Customer Termination Date.
- (b) If Seller elects to receive electronic notification as provided in Section 3.7, the Buyer shall provide to Seller a notice of Customer Termination Date via electronic file transfer and in a format specified by the Buyer. Each notice of Customer Termination Date shall include the account number, the Customer Termination Date and the customer's rate class.
  - (c) Seller's obligation to provide Requirements shall cease at the Conclusion Date.

### Section 3.4 Customer Disconnection Date

- (a) With respect to each Default Service Customer whose Default Service is disconnected during the Delivery Term, Seller shall provide Requirements to the Buyer for such customer on the Customer Disconnection Date but shall not provide Requirements for such customer after the Customer Disconnection Date.
- (b) If Seller elects to receive electronic notification as provided in Section 3.7, The Buyer shall provide to Seller a notice of Customer Disconnection Date via electronic file transfer and in a format specified by the Buyer. Each notice of Customer Disconnection Date shall include the account number, the Customer Disconnection Date and the customer's rate class.

### Section 3.5 Distribution Service Interruptions

Seller acknowledges that interruptions in distribution service occur and may reduce the load served hereunder. Seller further acknowledges and agrees that the Buyer may interrupt distribution service to customers consistent with the Distribution Service Terms and the Competitive Supplier Terms. In no event shall a Party have any liability or obligation to the other Party in respect of any such interruptions in distribution service.

### Section 3.6 Release of Customer Information

The Buyer will not issue any customer information to Seller unless Seller has first obtained the necessary authorization in accordance with the provisions of the Competitive Supplier Terms.

### Section 3.7 <u>Electronic Notification</u>

At Seller's election, the Buyer shall provide notices contemplated by Sections 3.2, 3.3 and 3.4 via electronic file transfer. Such election shall only be effective when Seller (i) establishes an account on the Advantis Value Added Network ("VAN"), and (ii) verifies its ability to transfer files to and receive files from the Buyer at least fourteen (14) days prior to the day on which Seller desires to commence electronic receipt. Seller shall bear all costs to establish an account and all costs of Seller and the Buyer to use the VAN. If Seller fails to pay all VAN costs and charges when due and payable, Seller's election shall not be valid and the Buyer shall no longer be obligated to provide electronic notification.

### Section 3.8 Change in Supply; No Prohibition on Programs

- (a) Seller acknowledges and agrees that the number of customers and the Requirements to meet the needs of such customers will fluctuate throughout the Delivery Term and may equal zero. The Buyer shall not be liable to Seller for any losses Seller may incur, including but not limited to lost revenues, and losses that may result from any change in Requirements, number or location of customers taking service, the location of the Delivery Point(s), the composition or components of market products or Requirements, or the market for electricity, or change in the Distribution Service Terms or the Default Service Tariff. Seller further acknowledges and agrees that there is no limit on the number of Customer Initiation Dates, Customer Termination Dates and Customer Disconnection Dates.
- (b) Seller acknowledges and agrees that the Buyer has the right but not the obligation to continue, initiate, support or participate in any programs, promotions, or initiatives designed to or with the effect of encouraging customers to leave Default Service for any reason ("Programs"). Nothing in this Agreement shall be construed to require notice to or approval of Seller in order for the Buyer to take any action in relation to Programs.
- (c) Seller acknowledges and agrees that the Buyer and Affiliates of the Buyer will not provide Seller preferential access to or use of the Buyer's System and that Seller's sole and exclusive rights and remedies with regard to access to, use or availability of the Buyer's System, and the Buyer's or Affiliates of the Buyer's obligation to transmit electricity are those rights, remedies and obligations provided under the Distribution Service Terms or the NEPOOL Rules.

### Section 3.9 <u>Uniform Disclosure Requirements</u>

Seller shall provide the Buyer information pertaining to power plant emissions, fuel types, labor information and any other information required by the Buyer to comply with the uniform disclosure requirements contained in 220 CMR 11.00 and any other disclosure regulations which may be imposed upon the Buyer during the term of this Agreement, as such disclosure requirements apply to Default Service provided by Seller pursuant to this Agreement.

Seller shall utilize the NE-GIS to transfer Load Obligations or NE-GIS Certificates, as applicable, to the Buyer's certificate account in the number equal to the Delivered Energy for Default Service in a month. Such Load Obligations or NE-GIS Certificates, as applicable, shall be delivered by Seller at least five (5) Business Days prior to the close of the applicable Trading Period. The Load Obligations or NE-GIS Certificates, as applicable, shall be delivered by Seller to an account within the NE-GIS designated by the Buyer.

### Section 3.10 Customer Bill Inserts

Seller may furnish the Buyer with a one page bill insert which the Buyer may include in the bill that the Buyer sends to each Default Service Customer in the Commercial Customer Group, the Industrial Customer Group or the Residential Customer Group as to which Seller is providing Requirements to the Buyer during the Delivery Term for such customer group. Bill inserts provided by Seller shall be included in only one monthly billing cycle during the Delivery Term. Such inserts shall be printed on 60# Mountie Matte paper, shall be three and one-quarter inches high by six and one-quarter inches wide in size and may be of any typeface except ITC Century and ITC Franklin Gothic.

Seller shall notify the Buyer at least sixty (60) days prior to the start of the monthly billing cycle in which Seller requests Buyer to include Seller's insert in Default Service Customer bills. A copy of the proposed bill insert is to be included with Seller's initial notification and must be reviewed by the Department before final printing. The Buyer will respond within seven (7) days if it can accommodate Seller's request. If space allows for inclusion, but additional postage is required, the Buyer will provide an estimate of the cost of additional postage to be paid by Seller in order to include the insert in the requested monthly billing cycle, or will suggest an alternate start date. Subject to the foregoing, inserts may be included in any bill sent to a Default Service Customer in the Commercial Customer Group, the Industrial Customer Group or the Residential Customer Group taking service pursuant to the Default Service Tariff during the Delivery Term and in the monthly billing cycle selected by Seller. Inserts must be received by the Buyer at least ten (10) days prior to the start date of their inclusion in customer bills.

Bill inserts shall be sent to the following address in a package clearly marked [Name of Customer Group & Seller] Bill Inserts - Requested Commencement Date of Mailing: [DATE]:

Pitney Bowes Attn: Steve Roy 25 International Drive Windsor, CT 06095

A single copy of each insert, along with the requested commencement date of mailing, shall also be sent to the following:

Mr. Michael J. Hager Vice President, Energy Supply – New England National Grid 55 Bearfoot Road Northborough, MA 01532 Ms. Kathleen Yetman Manager, Billing and Systems National Grid 55 Bearfoot Road Northborough, MA 01532

The Buyer shall be responsible for including no more than the quantity of inserts provided to it by Seller. The Buyer shall not be responsible for returning to Seller unused inserts unless Seller has made prior arrangements for their return.

### ARTICLE 4. SALE AND PURCHASE

### Section 4.1 <u>Provision Delivery and Receipt</u>

Seller shall provide and deliver to the Delivery Point and the Buyer shall receive at the Delivery Point the percentage of the Requirements applicable to each customer group as set forth on Appendix C during the Delivery Term.

### Section 4.2 Responsibilities

(a) The Buyer shall arrange with the ISO for transmission service over the PTF and non-PTF from and after the Delivery Point to the customers' meters. The Buyer shall be responsible for all transmission costs over the PTF and non-PTF from the Delivery Point to the

meters of the Buyer's customers. Seller shall be responsible for all transmission and distribution costs associated with the delivery of Requirements to and including the Delivery Point except the transmission costs otherwise provided for in this paragraph.

- (b) Seller shall be responsible for all decisions and data submissions associated with the Ownership Share of the Load Assets in ARTICLE 6, Section 6.4 including any bids into the market system to manage these obligations.
- Seller shall be responsible for all present and future obligations, requirements, and costs associated with the Requirements and/or Seller's provision thereof, whether system wide or locational based, including, but not limited to, the real-time load obligations, capacity obligations and/or charges (including, but not limited to, ICAP/UCAP/Locational ICAP/locational unforced capacity, forward capacity market obligations), regulation obligations and/or charges (including any regulation opportunity costs), operating reserve obligations and/or charges (including, but not limited to, (w) any real-time reserve charges, (x) any forward reserve charges, (y) any charges associated with Reserve Constraint Penalty Factors ("RCPFs"), and (z) RMR operating reserve charges other than RMR operating reserve charges that are monthly fixed-cost charges paid to resources pursuant to agreements negotiated under Market Rule 1 Appendix A, Section 6), net commitment period compensation (NCPC) charges (other than RMR NCPC charges that are monthly fixed-cost charges paid to resources pursuant to agreements negotiated under Market Rule 1 Appendix A, Section 6), emergency energy charges, inadvertent energy revenue charges, ISO Schedule 1 charges (other than ISO Schedule 1 charges that are both (i) associated with the Buyer's Regional Network Service and (ii) allocated on the basis of Regional Network Load), ISO Schedule 2 charges, ISO Schedule 3 charges, day-ahead energy market charges, and realtime energy market charges at the nodes, if any, and if none, the zones representing the actual locations of the meters of the Default Service Customers, and any other requirements, market products, expenses and charges imposed by NEPOOL or the ISO, as they may be in effect from time to time related to the provision and/or delivery of Requirements to and including the Delivery Point. Except as otherwise specifically excluded in this paragraph, Seller's responsibility for costs and charges shall be without regard to the manner in which they are allocated by NEPOOL or the ISO.
- (d) Seller shall be responsible for all costs and components thereof of any Locational Marginal Prices to provide Default Service (during the applicable Delivery Term), including its delivery to the Delivery Point. These components include the energy component, loss component, and congestion component.
- (e) Seller shall be responsible for all congestion charges for delivery to the actual meters of Default Service Customers (during the applicable Delivery Term).
- (f) Seller shall utilize the NE-GIS to transfer the quantity of MA New Renewable Generation Certificates equal to the RPS Requirement to the account within the NE-GIS designated by the Buyer. Seller may satisfy the Aggregate RPS Requirement at any time during the Delivery Term provided such delivery occurs at least five (5) Business Days prior to the close of the applicable Trading Period; provided further, however, that the total number of MA New Renewable Generation Certificates shall not exceed the Aggregate RPS Requirement. MA New Renewable Generation Certificates shall be delivered by Seller to at least five (5) Business Days prior to the close of the applicable Trading Period.

(g) Seller shall notify Buyer within one Business Day of receipt of notice of termination from the ISO or event of default or similar occurrence under the Market Participant Service Agreement.

### ARTICLE 5. AMOUNT, BILLING and PAYMENT

Section 5.1 <u>Amount</u>



Section 5.2 Billing and Payment

- (a) On or before the tenth (10th) day of each month during the term of this Agreement, Seller shall calculate the amount due and payable to Seller pursuant to Section 5.1 with respect to the preceding month (the "Calculation"). Seller shall provide the Calculation to the Buyer and such Calculation shall include sufficient detail for the Buyer to verify its formulation and computation. Calculations under this paragraph shall be subject to recalculation in accordance with Article 6 and shall be subject to adjustment (positive or negative) based upon such recalculation (a "Reconciliation Adjustment"). Seller shall promptly calculate the Reconciliation Adjustment upon receiving data described in Section 6.3 and shall include the adjustment, if any, in the next month's Invoice. A Reconciliation Adjustment based upon a change in the quantity for an earlier month shall be calculated using the applicable Contract Rate for the month in which the Delivered Energy was received.
- (b) Seller shall submit to the Buyer an invoice with such Calculation as provided for in paragraph (a) of this Section (the "Invoice") and the respective amounts due under this Agreement not later than the tenth (10th) day of each month. The Buyer shall pay Seller the amount of the Invoice (including the Reconciliation Adjustment, if any, as a debit or credit) less any amounts disputed in accordance with Section 5.3, on or before the twenty-fifth (25th) day after receiving the Invoice (the "Due Date"). Except for amounts disputed in accordance with Section 5.3, if all or any part of the Invoice remains unpaid after the Due Date, interest shall accrue after but not including the Due Date and be payable to Seller on such unpaid amount at the Interest Rate in effect on the Due Date. The Due Date for a Reconciliation Adjustment shall be the Due Date of the Invoice in which it is included.
- (c) Each Party shall notify the other Party upon becoming aware of an error in an Invoice, Calculation or Reconciliation Adjustment (whether the amount is paid or not) and Seller shall promptly issue a corrected Invoice. Overpayments shall be returned by the receiving Party upon request or deducted by the receiving Party from subsequent invoices, with interest accrued

at the Interest Rate from the date of the receipt of the overpayment until the date paid or deducted.

### Section 5.3 <u>Challenge to Invoices</u>

Unless otherwise agreed: (i) either Party may challenge, in writing, the accuracy of Calculations, Invoices or Reconciliation Adjustments (or the data utilized in the forgoing) no later than twenty-four (24) months after the Due Date of the Invoice in which the disputed information is contained; (ii) if a Party does not challenge the accuracy within such twenty-four (24) month period, such Invoice shall be binding upon that Party and shall not be subject to challenge. If an Invoice is paid and thereafter the payment or the Invoice on which the payment was based is disputed, upon notice of dispute, the Party receiving payment shall hold the amount in dispute in escrow for the benefit of the prevailing Party until the resolution of such dispute. If any amount in dispute is ultimately determined (under the terms herein) to be due to the other Party, it shall be paid or returned (as the case may be) to the other Party within three (3) Business Days of such determination along with interest accrued at the Interest Rate from the (i) date due and owing in accordance with the Invoice until the date paid or (ii) if the amount was paid and is to be returned, from the date paid, until the date returned.

### Section 5.4 Taxes, Fees and Levies

Seller shall be obligated to pay all present and future taxes, fees and levies ("Taxes") which may be assessed by any entity upon the Seller's performance under this Agreement including but not limited to the purchase and sale of Requirements and MA New Renewable Generation Certificates to the Buyer. Seller shall pay all Taxes with respect to the Requirements up to and at the Delivery Point, and the Buyer will pay all Taxes with respect to the Requirements after the Delivery Point. All Requirements, including electricity and other related market products delivered hereunder by Seller to the Buyer shall be sales for resale with the Buyer reselling such electricity and products.

### Section 5.5 Netting and Setoff

Except for security provided pursuant to Section 7.3 (which shall not be considered for purposes of this Section 5.5) and unless otherwise specified in another agreement between the Parties, if the Parties are required to pay an amount on the same date each to the other under this Agreement, or if any costs that are a Party's responsibility under this Agreement are incorrectly or inappropriately charged to the Party by the ISO, such amounts shall be netted, and the Party owing the greater aggregate amount shall pay to the other Party any difference between the amounts owed. Each Party reserves all rights, setoffs, counterclaims and other remedies and defenses (to the extent not expressly herein or therein waived or denied) that such Party has or to which such Party may be entitled arising from or out of this Agreement. Further, if the Buyer incurs any costs or charges that are the responsibility of Seller under this Agreement, such costs or charges may, at the Buyer's election, be netted against any amount due to Seller under this Agreement. All outstanding obligations to make payment under this Agreement may be netted against each other, set off or recouped therefrom, or otherwise adjusted.

# ARTICLE 6. QUALITY; LOSSES and QUANTITIES REQUIRED; DETERMINATION AND REPORTING OF HOURLY LOADS

### Section 6.1 Quality

All electricity shall be delivered to the Buyer in the form of three-phase sixty-hertz alternating current at the Delivery Point.

### Section 6.2 Losses

Seller shall be responsible for all transmission and distribution losses and the costs related to such losses and associated with the Requirements, namely, losses from the Delivery Point to the meters of the Default Service Customers. Seller shall provide to the Buyer at the Delivery Point quantities of electricity and ancillary services, capacity and all other market products related thereto to cover such losses from the Delivery Point to the meters of Default Service Customers. The quantities required for this purpose in each hour of a billing period shall be determined in accordance with ISO's and the Buyer's procedures for loss determination.

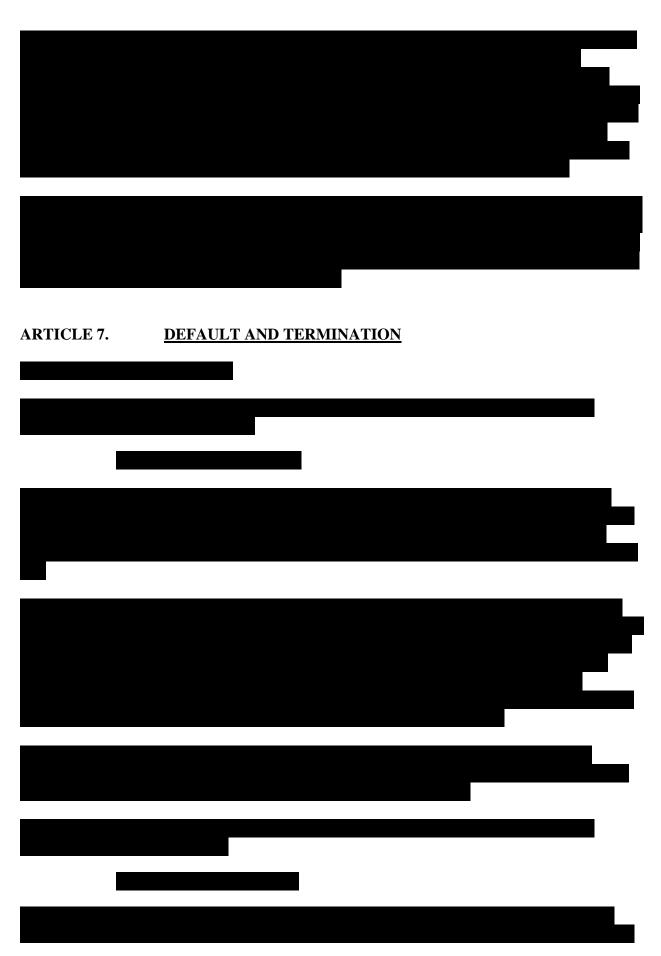
### Section 6.3 <u>Determination and Reporting of Hourly Loads</u>

(a) The Buyer will estimate the Delivered Energy for Default Service provided by Seller pursuant to this Agreement based upon average load profiles developed for each of the Buyer's customer classes and the Buyer's actual total hourly load. The Buyer shall report to the ISO and Seller, the estimated Delivered Energy. The Buyer will normally report to the ISO and to Seller Seller's estimated Delivered Energy by 1:00 P.M EPT of the second following Business Day. Appendix A provides a general description of the estimation process that the Buyer will initially employ (the "Estimation Process"). The Buyer shall have the right but not the obligation, in its sole and exclusive judgment, to modify the Estimation Process from time to time, provided that any such modification is designed with the objective of improving the accuracy of the Estimation Process.

Each month, the Buyer shall reconcile the Buyer's estimate of the Delivered Energy based upon the Buyer's meter reads (such meter reads as provided for in the Distribution Service Terms). The reconciliation, including all losses, shall be the adjusted Delivered Energy. The Buyer will normally notify the ISO of any resulting adjustment (debit or credit) to Seller's account for the Load Assets (set forth in Section 6.4) no later than the last day of the third month following the billing month. Appendix A provides a general description of this reconciliation process, which process may be changed by the Buyer from time to time in its sole and exclusive discretion.

Section 6.4 <u>NEPOOL Market System Implementation</u>







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#### ARTICLE 8. NOTICES, REPRESENTATIVES OF THE PARTIES

#### Section 8.1 Notices

Any notice, demand, or request required or authorized by this Agreement to be given by one Party to another Party shall be in writing. It shall either be sent by facsimile (with receipt confirmed by telephone and electronic transmittal receipt), courier, personally delivered (including overnight delivery service) or mailed, postage prepaid, to the representative of the other Party designated in accordance with this Article. Any such notice, demand, or request shall be deemed to be given (i) when sent by facsimile confirmed by telephone and electronic transmittal receipt, (ii) when actually received if delivered by courier or personal delivery (including overnight delivery service) or (iii) five (5) days after deposit in the United States mail, if sent by first class mail return receipt requested.

Notices and other communications by Seller to the Buyer shall be addressed to:

Mr. Michael J. Hager Vice President, Energy Supply – New England National Grid 55 Bearfoot Road Northborough, MA 01532 (508) 421-7350 (phone) (508) 421-7335 (fax)

and

Notices concerning Article 7 shall also be sent to:

General Counsel National Grid 25 Research Drive Westborough, MA 01582 (508) 389-9000 (phone) (508) 389-2605 (fax)

Notices and other communications by the Buyer to Seller shall be addressed to:



With a copy of any notices concerning Articles 5, 7, 9, 10, 14 or 15 to:



Any Party may change its representative or address for notices by written notice to the other Party; however such notice shall not be effective until it is received by the other Party.

#### Section 8.2 <u>Authority of Representative</u>

The Parties' representatives shall have full authority to act for their respective Party in all matters relating to the performance of this Agreement. Notwithstanding the foregoing, a Party's representative shall not have the authority to amend, modify, or waive any provision of this Agreement unless they are duly authorized officers of their respective entities and such amendment, modification or waiver is made in accordance with Article 17.

#### ARTICLE 9. LIABILITY; INDEMNIFICATION; RELATIONSHIP OF PARTIES

#### Section 9.1 <u>Limitation on Remedies, Liability and Damages</u>

EXCEPT AS SET FORTH IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE PARTY'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED FOR IN THIS AGREEMENT, THE PARTY'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. TO THE FULLEST EXTENT PERMISSIBLE BY LAW, NEITHER THE BUYER NOR SELLER, NOR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, PARENT OR AFFILIATES, SUCCESSOR OR ASSIGNS, OR THEIR RESPECTIVE OFFICERS, DIRECTORS, AGENTS, OR EMPLOYEES, SUCCESSORS, OR ASSIGNS, SHALL BE LIABLE TO THE OTHER PARTY OR ITS PARENT, SUBSIDIARIES, AFFILIATES. OFFICERS, DIRECTORS, AGENTS, EMPLOYEES, SUCCESSORS OR ASSIGNS, FOR CLAIMS, SUITS, ACTIONS OR CAUSES OF ACTION FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES (INCLUDING ATTORNEY'S FEES OR LITIGATION COSTS EXCEPT AS EXPRESSLY PROVIDED IN SECTION 15.2 AND IN ACCORDANCE WITH THE LIMITATION THEREUNDER) CONNECTED WITH OR RESULTING FROM PERFORMANCE OR NON-PERFORMANCE OF THIS AGREEMENT, OR ANY ACTIONS UNDERTAKEN IN CONNECTION WITH OR RELATED TO THIS AGREEMENT. INCLUDING WITHOUT LIMITATION ANY SUCH DAMAGES WHICH ARE BASED UPON CAUSES OF ACTION FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE AND MISREPRESENTATION), BREACH OF WARRANTY, STRICT LIABILITY, STATUTE, OPERATION OF LAW, OR ANY OTHER THEORY OF RECOVERY. THE PROVISIONS OF THIS SECTION SHALL

APPLY REGARDLESS OF FAULT AND SHALL SURVIVE TERMINATION, CANCELLATION, SUSPENSION, COMPLETION OR EXPIRATION OF THIS AGREEMENT. EXCEPT AS SET FORTH IN THIS AGREEMENT, IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

#### Section 9.2 Indemnification

- (a) Seller agrees to defend, indemnify and save the Buyer, its officers, directors, employees, agents, successors assigns, and Affiliates and their officers, directors, employees and agents harmless from and against any and all third-party claims, suits, actions or causes of action and any resulting losses, damages, charges, costs or expenses, (including reasonable attorneys' fees and court costs), arising from or in connection with any (a) breach of a representation or warranty or failure to perform any covenant or agreement in this Agreement by Seller, (b) any violation of applicable law, regulation or order by Seller, (c) any act or omission by Seller with respect to this Agreement, first arising, occurring or existing during the term of this Agreement, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement, except to the extent caused by an act of negligence or willful misconduct by an officer, director, agent, employee, or Affiliate of the Buyer or its respective successors or assigns.
- (b) The Buyer agrees to defend, indemnify and save Seller, its officers, directors, employees, agents, successor, assigns, and Affiliates and their officers, directors, employees and agents harmless from and against any and all third-party claims, suits, actions or causes of action and any resulting losses, damages, charges, costs or expenses, (including reasonable attorneys' fees and court costs), arising from or in connection with any (a) breach of representation or warranty or failure to perform any covenant or agreement in this Agreement by said Buyer, (b) any violation of applicable law, regulation or order by Buyer, (c) any act or omission by the Buyer, with respect to this Agreement first arising, occurring or existing during the term of this Agreement, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement, except to the extent caused by an act of negligence or willful misconduct by an officer, director, agent, employee or Affiliate of Seller or its respective successors or assigns.
- (c) If any Party intends to seek indemnification under this Section from the other Party with respect to any action or claim, the Party seeking indemnification shall give the other Party notice of such claim or action within thirty (30) days of the later of the commencement of, or actual knowledge of, such claim or action; provided, however, that in the event such notice is delivered more than thirty (30) days after the Party seeking indemnification knows of such claim or action, the indemnifying Party shall be relieved of its indemnity hereunder only if and to the extent such indemnifying Party was actually prejudiced by such delay. The Party seeking indemnification shall have the right, at its sole cost and expense, to participate in the defense of any such claim or action. The Party seeking indemnification shall not compromise or settle any

such claim or action without the prior consent of the other Party, which consent shall not be unreasonably withheld.

#### Section 9.3 <u>Independent Contractor Status</u>

Nothing in this Agreement shall be construed as creating any relationship between the Buyer and Seller other than that of independent contractors for the sale and delivery of Requirements for Default Service.

#### ARTICLE 10. ASSIGNMENT

#### Section 10.1 General Prohibition Against Assignments

Except as provided in Section 10.2, neither Party shall assign, pledge or otherwise transfer this Agreement or any right or obligation under this Agreement without first obtaining the other Party's written consent, which consent shall not be unreasonably withheld.

#### Section 10.2 <u>Exceptions to Prohibition Against Assignments</u>

- (a) Seller may, without the Buyer's prior written consent, collaterally assign this Agreement in connection with financing arrangements provided that any such collateral assignment that provides for the Buyer to direct payments to the collateral agent (i) shall be in writing, (ii) shall not be altered or amended without prior written notice to the Buyer from both Seller and the collateral agent, and (iii) provided that any payment made by the Buyer to the collateral agent shall discharge the Buyer's obligation as fully and to the same extent as if it had been made to the Seller. Seller must provide the Buyer at least ten (10) days advance written notice of collateral assignment and provide copies of any such assignment and relevant agreements or writings.
- (b) The Buyer may upon prior written notice to Seller assign all or a portion of its rights and obligations under this Agreement to any Affiliate of the Buyer without consent of Seller. Either Party may, upon written notice, assign its rights and obligations hereunder, or transfer such rights and obligations by operation of law, to any entity with which or into which such Party shall merge or consolidate or to which such Party shall transfer all or substantially all of its assets, provided that such other entity agrees to be bound by the terms hereof and provided further, that such other entity's creditworthiness is comparable to or higher than that of such Party at the time this Agreement was executed and such Party is not relieved of any obligation or liability hereunder as a result of such assignment

#### ARTICLE 11. SUCCESSORS AND ASSIGNS

This Agreement shall inure to the benefit of and shall be binding upon the Parties hereto and their respective successors and permitted assigns.

#### ARTICLE 12. FORCE MAJEURE

- (a) Force Majeure shall include but not be limited to acts of God, earthquakes, fires, floods, storms, strikes, labor disputes, riots, insurrections, acts of war (whether declared or otherwise), terrorism, acts of terrorism, acts of governmental, regulatory or judicial bodies, but if and only to the extent that such event or circumstance (i) directly affects the availability of the transmission or distribution facilities of the New England Transmission System, the Buyer or an Affiliate of the Buyer necessary to provide service to the Buyer's customers which are taking service pursuant to the Default Service Tariff and (ii) it is not within the reasonable control of, or the result of the negligence of, the claiming Party, and which, by the exercise of due diligence, the claiming Party is unable to overcome or avoid or cause to be avoided. Force Majeure shall not be based on (A) fluctuations in Default Service, (B) the cost to a Party to overcome or avoid, or cause to be avoided, the event or circumstance affecting such Party's performance or (C) events affecting the availability or cost of operating any generating facility.
- (b) To the extent that either Party is prevented by Force Majeure from carrying out, in whole or in part, its obligations hereunder and (i) such Party gives notice and detail of the Force Majeure to the other Party as soon as practicable after the onset of the Force Majeure, including an estimate of its expected duration and the probable impact on the performance of its obligations hereunder; (ii) the suspension of performance is of no greater scope and of no longer duration than is required by the Force Majeure, and (iii) the Party claiming Force Majeure uses commercially reasonable efforts to remedy or remove the inability to perform caused by Force Majeure, then the affected Party shall be excused from the performance of its obligations prevented by Force Majeure. However, neither Party shall be required to pay for any obligation the performance of which is excused by Force Majeure. This paragraph shall not require the settlement of any strike, walkout, lockout or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts or other labor disputes shall be entirely within the discretion of the Party involved in the dispute.
- (c) No obligations of either Party which arose before the Force Majeure occurrence causing the suspension of performance shall be excused as a result of the event of Force Majeure.
- (d) Prior to the resumption of performance suspended as a result of a Force Majeure occurrence, the Party claiming the Force Majeure shall give the other Party written notice of such resumption.

#### ARTICLE 13. WAIVERS

No delay or omission in the exercise of any right under this Agreement shall impair any such right or shall be taken, construed or considered as a waiver or relinquishment thereof, but any such right may be exercised from time to time and as often as may be deemed expedient. The waiver of any single breach or default of any term or condition of this Agreement shall not be deemed to constitute the waiver of any other prior or subsequent breach or default of the Agreement or any other term or condition.

#### ARTICLE 14. <u>LAWS AND REG</u>ULATIONS

- (a) This Agreement and all rights, obligations, and performances of the Parties hereunder, are subject to all applicable federal and state laws, and to all duly promulgated orders and other duly authorized action of governmental authorities having jurisdiction hereof.
- (b) The rates, terms and conditions contained in this Agreement are not subject to change under Section 205 of the Federal Power Act as that section may be amended or superseded, absent the mutual written agreement of the Parties. Each Party irrevocably waives its rights, including its rights under §§ 205-206 of the Federal Power Act, unilaterally to seek or support a change in the rate(s), charges, classifications, terms or conditions of this Agreement or any other agreements entered into in connection with this Agreement. By this provision, each Party expressly waives its right to seek or support: (i) an order from the Commission finding that the market-based rate(s), charges, classifications, terms or conditions agreed to by the Parties in the Agreement are unjust and unreasonable; or (ii) any refund with respect thereto. Each Party agrees (x) not to make or support such a filing or request, (y) that these covenants and waivers shall be binding notwithstanding any regulatory or market changes that may occur hereafter and (z) that it shall not challenge or support a challenge to the enforceability of the waiver in this Section (b).
- (c) Absent the agreement of all Parties to a proposed change, the standard of review for changes to this Agreement proposed by a non-party or the Commission acting sua sponte shall be the "public interest" standard of review set forth in <u>United Gas Pipe Line Co. v. Mobile Gas Service Corp.</u>, 350 U.S. 332 (1956) and <u>Federal Power Commission v. Sierra Pacific Power Co.</u>, 350 U.S. 348 (1956) (the "<u>Mobile-Sierra</u>" doctrine).
- (d) The Parties agree that, if and to the extent that the Commission adopts a final rule or order which requires that, in order to exclude application of the just and reasonable standard of review and to mandate application of the public interest standard of review under the Mobile-Sierra doctrine for a proposed change to this Agreement which is not agreed to by all Parties, the Parties must agree to language which varies from that set forth in Article 14(c) then, without further action of either Party, Article 14(c) will be deemed amended to incorporate the specific language required by such final rule or order as is necessary to have the public interest standard of review under the Mobile-Sierra doctrine apply to any proposed change to this Agreement to which all Parties do not agree.
- (e) Nothing in this Article 14 is intended to modify any Party's right to enforce the terms of this Agreement as written.

#### ARTICLE 15. INTERPRETATION, DISPUTE RESOLUTION

#### Section 15.1 Governing Law

The Agreement shall be governed by and construed and performed in accordance with and the laws of the Commonwealth of Massachusetts, without giving effect to its conflict of laws principles.

#### Section 15.2 <u>Dispute Resolution</u>

All disputes between the Buyer and Seller under this Agreement shall be referred, upon notice by one Party to the other Party, to a senior manager of Seller designated by Seller, and a

senior manager of the Buyer designated by the Buyer, for resolution on an informal basis as promptly as practicable. In the event the designated senior managers are unable to resolve the dispute within ten (10) days of receipt of the notice, or such other period to which the Parties may jointly agree, such dispute shall be submitted to arbitration and resolved in accordance with the arbitration procedure set forth in this Section. The arbitration shall be conducted in Boston, Massachusetts before a single neutral arbitrator mutually agreed to and appointed by the Parties. If the Parties fail to agree upon a single arbitrator within ten (10) days of the referral of the dispute to arbitration, Seller and the Buyer shall each choose one arbitrator, who shall sit on a three-member arbitration panel. The two arbitrators so chosen shall within ten (10) days select a third arbitrator to act as chairman of the arbitration panel. In either case, the arbitrator(s) shall be knowledgeable and have at least two (2) years experience in electric utility matters, including wholesale power transactions and power market issues, and shall not have any current or past business or financial relationships with either Party or a witness for either Party and shall not have a direct or indirect interest in any Party or the subject matter of the arbitration. Each arbitrator shall take an oath of neutrality and it shall be grounds for removal of any arbitrator or for vacating the arbitrators' award if any of such arbitrator violates such oath of neutrality. The arbitrators shall make all of their decisions by majority vote. The arbitrators' ultimate decision after final hearing shall be in writing. If a panel of arbitrators, all of their decisions shall be by majority vote. The arbitrator(s) shall afford each of the Parties an opportunity to be heard and, except as otherwise provided herein, shall generally conduct the arbitration in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association unless otherwise mutually agreed by the Parties. There shall be no formal discovery conducted in connection with the arbitration unless otherwise mutually agreed by the Parties; provided, however, that the Parties shall exchange witness lists and copies of any exhibits that they intend to utilize in their direct presentations at any hearing before the arbitrator(s) at least ten (10) days prior to such hearing, along with any other information or documents specifically requested by the arbitrator(s) prior to the hearing. The arbitrator(s) are not empowered to award any damages in excess of compensatory damages and each Party hereby irrevocably waives any right to recover damages in excess of compensatory damages with respect to any dispute resolved by arbitration. The arbitrators shall have no authority to award treble, exemplary or punitive damages of any type under any circumstances whether or not such damages may be available under state or federal law, or otherwise. In deciding the substance of the Parties' dispute, the arbitrators shall resolve the dispute in a manner consistent with the intent of the Parties as reflected in the terms of this Agreement. To the fullest extent permitted by law, any arbitration proceeding and the arbitrator's award shall be maintained in confidence by the Parties; provided, however, that either Party, or any of its Affiliates, may provide information regarding the arbitration without limitation to any regulatory agency requesting or requiring such information; provided, further, that any such provision of information must include a request for confidential treatment. Any offer made and the details of any negotiations to resolve the dispute shall not be admissible in the arbitration or otherwise. Unless otherwise agreed, the arbitrator(s) shall render a decision within ninety (90) days of his, her or their appointment and shall notify the Parties in writing of such decision and the reasons therefore, and shall make an award apportioning equally the payment of the costs and expenses of arbitration among the Parties; provided, however, that each Party shall bear the costs and expenses of its own attorneys, expert witnesses and consultants. The arbitrator(s) shall be authorized only to interpret and apply the provisions of this Agreement and shall have no power to modify or change the Agreement in any manner. The decision of the arbitrator(s) shall be final and binding upon the Parties, and judgment on the award may be entered in any court having jurisdiction, subject expressly to Section 15.3. Notwithstanding the foregoing, upon the application by any Party to a court for an order confirming, modifying or vacating the award, the court shall have the power to review whether,

as a matter of law based on the findings of fact determined by the arbitrator, the award should be confirmed, modified, or vacated in order to correct any errors of law made by the arbitrators. In order to effectuate such judicial review limited to issues of law, the Parties agree (and shall so stipulate to the court) that the findings of fact made by the arbitrator shall be final and binding on the Parties and shall serve as the facts to be submitted to and relied on by the court in determining the extent to which the award should be confirmed, modified, or vacated. Nothing in this paragraph shall impair the ability of a Party to exercise any right or remedy it has under this Agreement, including those in Article 7. To the fullest extent permitted by law, any arbitration proceeding and the arbitrator's award shall be maintained in confidence by the Parties; provided, however, that either Party, or any of its Affiliates, may provide information regarding the arbitration without limitation to any regulatory agency requesting or requiring such information or to a court in a proceeding to confirm, appeal (as such appeal is limited hereby) or enforce the award; provided, further, that any such provision of information must include a request for confidential treatment.

#### Section 15.3 Venue; Waiver of Jury Trial

Each Party hereto irrevocably (i) submits to the exclusive jurisdiction of the federal and state courts located in the Commonwealth of Massachusetts; (ii) waives any objection which it may have to the laying of venue of any proceedings brought in any such court; and (iii) waives any claim that such proceedings have been brought in an inconvenient forum. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION OR PROCEEDING RELATING TO THIS AGREEMENT.

#### ARTICLE 16. SEVERABILITY

Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change will not otherwise affect the remaining provisions and lawful obligations that arise under this Agreement. If any provision of this Agreement, or the application thereof to any Party or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Agreement and the application of such provision or circumstances shall not be affected by such invalidity or unenforceability.

#### ARTICLE 17. MODIFICATIONS

No modification or amendment of this Agreement will be binding on any Party unless it is in writing and signed by both Parties.

#### ARTICLE 18. <u>ENTIRE AGREEMENT</u>

This Agreement, including the Appendices, the tariffs and agreements referred to herein or therein, embody the entire agreement and understanding of the Parties in respect of the transactions contemplated by this Agreement. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those expressly set forth or

referred to herein or therein. It is expressly acknowledged and agreed that there are no restrictions, promises, representations, warranties, covenants or undertakings contained in any material provided or otherwise made available by the Seller or the Buyer to each other. This Agreement supersedes all prior agreements and understandings between the Parties with respect to the transactions contemplated hereby.

#### ARTICLE 19. COUNTERPARTS

This Agreement may be executed in any number of counterparts, and each executed counterpart shall have the same force and effect as an original instrument.

#### ARTICLE 20. <u>INTERPRETATION; CONSTRUCTION</u>

The article and section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties and shall not in any way affect the meaning or interpretation of this Agreement. For purposes of this Agreement, the term "including" shall mean "including, without limitation". The Parties acknowledge that, each Party and its counsel have reviewed and or revised this Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement, and it is the result of joint discussion and negotiation.

#### ARTICLE 21. REPRESENTATIONS; WARRANTIES AND COVENANTS

Each Party represents to the other Party, upon execution and continuing throughout the term of this Agreement, as follows:

- (a) It is duly organized in the form of business entity set forth in the first paragraph of this Agreement, validly existing and in good standing under the laws of its state of its organization and has all requisite power and authority to carry on its business as is now being conducted, including all regulatory authorizations as necessary for it to legally perform its obligations hereunder.
- (b) It has full power and authority to execute and deliver this Agreement and to consummate and perform the transactions contemplated hereby. This Agreement has been duly and validly executed and delivered by it, and, assuming that this Agreement constitutes a valid and binding agreement of the other Party, constitutes its valid and binding agreement, enforceable against it in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles.
- (c) Such execution, delivery and performance do not violate or conflict with any law applicable to it, any provision of its constitutional documents, or the terms of any note, bond, mortgage, indenture, deed of trust, license, franchise, permit, concession, contract, lease or other instrument to which it is bound, any order or judgment of any court or other agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets.

- (d) No declaration, filing with, notice to, or authorization, permit, consent or approval of any governmental authority is required for the execution and delivery of this Agreement by it or the performance by it of its obligations hereunder, other than such declarations, filings, registrations, notices, authorizations, permits, consents or approvals which, if not obtained or made, will not, in the aggregate, have a Material Adverse Effect.
- (e) Neither the execution and delivery of this Agreement by it will nor the performance by it of its obligations under this Agreement will or does (i) conflict with or result in any breach of any provision of its Governing Documents, (ii) result in a default (or give rise to any right of termination, cancellation or acceleration) under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which it or any of its subsidiaries is a party or by which it or any of its subsidiaries is bound, except for such defaults (or rights of termination, cancellation or acceleration) as to which requisite waivers or consents have been obtained or which, in the aggregate, would not have a Material Adverse Effect; or (iii) violate any order, writ, injunction, decree, statute, rule or regulation applicable to it, which violation would have a Material Adverse Effect.
- (f) There are no claims, actions, proceedings or investigations pending or, to its knowledge, threatened against or relating to it before any governmental authority acting in an adjudicative capacity relating to the transactions contemplated hereby that could have a Material Adverse Effect. It is not subject to any outstanding judgment, rule, order, writ, injunction or decree of any court or governmental authority which, individually or in the aggregate, would create a Material Adverse Effect.
- (g) There are no bankruptcy, insolvency, reorganization, receivership or other similar proceedings pending or being contemplated by it, or of its knowledge threatened against it.
- (h) With respect to Seller, (i) it and the ISO have fully executed a Market Participant Service Agreement ("Seller's MPSA"), and it has been approved by the Commission in accordance with Subsection 7.1 of the MPSA with the ISO and (ii) the ISO has not filed with the Commission a notice of termination of Seller's MPSA.
- (i) It is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party hereto, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement.

#### ARTICLE 22. <u>CONSENTS AND APPROVALS</u>

The Parties shall cooperate so that each Party may take such actions as necessary and required for the other Party to effectuate and comply with this Agreement including to (i) promptly prepare and file all necessary documentation, (ii) effect all necessary applications, notices, petitions and filings and execute all agreements and documents, and (iii) use all commercially reasonable efforts to obtain all necessary consents, approvals and authorizations of all other entities, in the case of each of the foregoing clauses (i), (ii) and (iii), necessary or advisable to consummate the transactions contemplated by this Agreement. The Buyer shall have the right to review and approve in advance all characterizations made by the Seller of the

information relating to the transactions contemplated by this Agreement which appear in any filing, press release or public announcement made in connection with the transactions contemplated hereby.

#### ARTICLE 23. CONFIDENTIALITY

Neither Seller nor the Buyer shall provide copies of Section 5.1, Section 6.4, Article 7, Appendices C and D or disclose the contents or terms thereof (the "Confidential Terms") to any third party without the prior written consent of the other Party; provided, however, that either Party may provide a copy of the Confidential Terms, in whole or in part to (1) any regulatory agency or governmental authority with jurisdictional interest requesting and/or requiring such Confidential Terms, or in order to comply with any applicable law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding, provided that in the case of a disclosure pursuant to the foregoing, such disclosure must include a request for confidential treatment of the Confidential Terms, and (2) an Affiliate if related to the Party's performance of its obligations hereunder, provided that such Affiliate agrees to treat the Confidential Terms as confidential in accordance with this clause.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the Parties have caused their duly authorized representatives to execute this Agreement on their behalf as of the date first above written.

MASSACHUSETTS ELECTRIC COMPANY
Name (print):
Title:
Name (print):
Title:

## APPENDIX A ESTIMATION OF SELLER HOURLY LOADS

#### Overview

Generating units operated by suppliers are dispatched by the power pool to meet the region's electrical requirements reliably, and at the lowest possible cost. As a result, a supplier's electricity production may not match the demand of its customers. In each hour some suppliers with low cost production units or that contract for the output of such units are net sellers of electricity to the pool, while other suppliers are purchasing power from the pool to meet the demand of their customers. To determine the extent to which suppliers are net buyers or sellers on an hourly basis, it is necessary to estimate the hourly aggregate demand for all of the customers served by each supplier. The Buyer will estimate Seller's Default Service load obligations within the Buyer's service territory and report the hourly results to the ISO on a daily basis.

The estimation process is a cost-effective approach to producing results that are reliable, unbiased and reasonably accurate. The hourly load estimates will be based on rate class load profiles, which will be developed from statistically designed samples. Each day, the class load shapes will be scaled to the population of customers served by each supplier. In cases where telemetered data on individual customers is available, it will be used in place of the estimated shapes. On a monthly basis, the estimates will be refined by incorporating actual usage data obtained from meter readings. In both processes, the sum of all suppliers' estimated loads will match the total load delivered into the distribution system. A description of the estimation process follows.

#### Daily Estimation of Suppliers' Own Load

The daily process estimates the hourly load for each supplier for the previous day. The following is an outline of this process:

- Select a proxy date from the previous year with characteristics which best match the day
  for which the hourly demand estimates are being produced. Extract class load shapes for
  the selected proxy date from the load research database.
- Scale the class load shapes appropriately for each individual customer based on the usage level of the customer relative to the class average usage level.
- Calculate a factor for each customer which reflects their relative usage level and includes an adjustment for losses ("load adjustment factor"). Aggregate the load adjustment factors across the customers served by each supplier in each class.
- Produce a preliminary estimate of each supplier's hourly loads by combining the proxy
  day class load shapes with the supplier's total load adjustment factors. Aggregate the
  loads across the classes for each supplier.

- Adjust the preliminary hourly supplier estimates so that their sum is equal to the Buyer's actual hourly metered loads (as metered at the point of delivery to the distribution system) by allocating any differences to suppliers in proportion to their estimated load.
- Adjust the hourly supplier estimates to include transmission losses within the Buyer's transmission system.
- Submit the hourly loads to the ISO.

After the Buyer has submitted the supplier hourly loads, the ISO will allocate PTF losses to the supplier's account during the settlement process.

#### **Monthly Reconciliation Process**

The monthly process will improve the estimates of supplier loads by incorporating the most recent customer usage information, which will be available after the monthly meter readings are processed. The actual customer meter readings, as well as actual interval data for the largest customers, are used to re-estimate all of the days in the calendar month being reconciled. Updates to customers' account status and supplier assignments that may have been missed during the daily processing (due to timing) are included. The resulting hourly supplier load estimates for all the days in the month are reported and used by the ISO as the basis for the monthly resettlement.

#### APPENDIX B FORM OF GUARANTY

#### Guaranty

This Guaranty (this "Guaranty"), dated effective as of [	_], 2006	(the	"Effective
Date"), is made and entered into by			
("Guarantor").			
WITNESSETH:			
WHEREAS, Massachusetts Electric Company ("the Buyer") and			
	(";	Seller	") and a [

] of Guarantor, have entered into the Power Supply Agreement for Default Service dated as of [ ], 2006 for the Delivery Term of [ ] (as such agreement may be amended and modified by the Buyer and Seller from time to time, the "Agreement"); and

WHEREAS, Guarantor will directly or indirectly benefit from the Agreement between Seller and the Buyer;

NOW THEREFORE, in consideration of the Buyer entering into the Agreement, Guarantor hereby covenants and agrees as follows:

- 1) GUARANTY. Subject to the provisions hereof, Guarantor hereby irrevocably and unconditionally guarantees the full and faithful timely performance and payment when due of the obligations of Seller that are now due or may hereafter become due and payable to the Buyer under the Agreement (the "Obligations"). This Guaranty shall constitute a guarantee of performance and payment and not of collection. The liability of Guarantor under this Guaranty shall be specifically limited to performance and payments expressly required to be made under the Agreement (even if such payments are or are deemed to be damages) to the extent of \_\_\_\_\_ Dollars (\$\_\_\_\_\_) (the "Guaranty Limit") but in no event shall Guarantor be subject hereunder to consequential, exemplary, equitable, loss of profits, punitive or tort damages, or, except to the extent specifically provided in the Agreement, any other damages.
- 2) DEMANDS AND NOTICE. Upon the occurrence and during the continuance of an Event of Default or termination, as may be defined in the Agreement, if Seller fails or refuses to pay any Obligations and the Buyer elects to exercise its rights under this Guaranty, the Buyer shall make a demand upon Guarantor (hereinafter referred to as a "Demand"). A Demand shall be in writing and shall reasonably and briefly specify in what manner and what amount Seller has failed to perform or pay and an explanation of why such performance or payment is due, with a specific statement that the Buyer is calling upon Guarantor to perform and/or pay under this Guaranty. A Demand satisfying the foregoing requirements shall be required with respect to Obligations before Guarantor is required to pay (free of any deductions or withholdings) such Obligations hereunder and shall be deemed sufficient notice to Guarantor that it must pay the Obligations within ten (10) Business Days, after its receipt of the Demand. A single written Demand shall be effective as to any specific default during the continuance of such default, until Seller or Guarantor has cured such default, and additional written demands concerning such default shall not be required until such default is cured. As used herein, the term "Business Day" shall mean a day on which

commercial banks or financial institutions are open for business in the Commonwealth of Massachusetts.

- 3) <u>REPRESENTATIONS AND WARRANTIES</u>. Guarantor represents and warrants that:
  - 3.1 it is a corporation duly organized and validly existing and in good standing under the laws of the State of New York and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;
  - 3.2 the execution, delivery and performance of this Guaranty and each transaction contemplated by this Guaranty, do not and will not (with or without the lapse of time, the giving of notice or both, contravene, conflict with or result in a breach of or default under any provision of its constitution or any writ, order, judgment, law, rule or regulation to which it is a party or is subject or by which it is bound; and
  - 3.3 no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and
  - 3.4 this Guaranty, when executed and delivered, will constitute a valid and legally binding agreement of Guarantor, except as the enforceability of this Guaranty may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.
- 4) <u>SETOFFS AND COUNTERCLAIMS</u>. Without limiting Guarantor's own defenses and rights hereunder, Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Seller or any other affiliate of Guarantor is or may be entitled to arising from or out of the Agreement or otherwise, except for defenses arising out of the bankruptcy, insolvency, dissolution or liquidation of Seller, the lack of power or authority of Seller to enter into, amend and/or perform the Agreement, or the lack of authority of Seller to waive or consent to any provision of the Agreement or a claim as to the Agreement's validity regularity or enforceability.
- 5) <u>AMENDMENT OF GUARANTY</u>. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and the Buyer.
- 6) WAIVER; TERMINATION. Except as required in Section 2 above, Guarantor hereby waives (a) notice of acceptance of this Guaranty; (b) presentment, demand and notice of dishonor concerning the liabilities of Guarantor; and (c) any right to require that any action or proceeding be brought against Seller or any other person, or to require that the Buyer exhaust its remedies against Seller or seek enforcement of any performance against Seller or any other person, or against any collateral pledged by Seller or any other person liable for payment or performance of the Obligations, prior to any action against Guarantor under the terms hereof. Buyer shall not be obligated to file any claim relating to the Obligations in the event that Seller becomes subject to

a bankruptcy, reorganization or similar proceeding, and the failure of the Buyer to so file shall not affect the Guarantor's obligations hereunder.

Except as to applicable statutes of limitation, no delay of the Buyer in the exercise of, or failure to exercise, any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from any obligations hereunder.

Guarantor consents to the renewal, compromise, extension, acceleration or other changes including in the time of payment of and other changes in the terms of the Obligations, or any part thereof and amendments thereto, or any changes and modifications to the terms of the Agreement or waivers there under.

Guarantor shall not be discharged or released from its obligations hereunder by any proceeding, voluntary or involuntary, involving the bankruptcy, insolvency, receivership, reorganization, liquidation or arrangement of Seller or by any defense which Seller may have by reason of the order, decree or decision of any court or administrative body resulting from any such proceeding. Guarantor agrees that this Guaranty shall continue to be effective or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by the Buyer as a result of the bankruptcy of Seller, or otherwise, all as though such payments had not been made.

This Guaranty and the Guarantor's obligations hereunder shall remain in effect for the term of the Agreement.

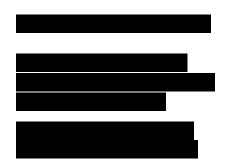
<u>NOTICE</u>. Any Demand, notice, request, instruction, correspondence or other document to be given hereunder by any party to another (herein collectively called "Notice") shall be in writing and delivered personally or mailed by certified mail, postage prepaid and return receipt requested, or by telegram or facsimile, as follows:

#### To the Buyer:

Vice President-Energy Supply New England National Grid 55 Bearfoot Road Northborough, MA 01532

Fax No.: (508) 421-7335 Phone No.: (518) 421-7350

#### To Guarantor:



Notice given by personal delivery or mail shall be effective upon actual receipt. Notice given by telegram shall be effective upon actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours. Notice given by facsimile shall be effective upon (i) actual receipt if received during the recipient's normal business hours, or at the beginning of the recipient's next business day after receipt if not received during the recipient's normal business hours and (ii) confirmation of receipt by telephone. All Notices by telegram or facsimile shall be confirmed promptly after transmission in writing by certified mail or personal delivery. Any party may change any address to which Notice is to be given to it by giving notice in accordance with the requirements of this Section.

MISCELLANEOUS. This Guaranty shall in all respects be governed by, and construed in accordance with, the law of the State of New York, without regard to principles of conflicts of laws.

This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by the Buyer and its successors and permitted assigns. The Guarantor may not assign this Guaranty in part or in whole without the prior written consent of the Buyer. The Buyer may not assign its rights or benefits under this Guaranty in part or in whole except (i) with the prior written consent of the Guarantor, or (ii) pursuant to a permitted assignment of Agreement ("Assigned Agreement"), in which case the assignee will succeed to the rights of the Buyer hereunder arising after the date of such assignment. The Guarantor's liability hereunder with respect to any and all such Assigned Agreement, together with any other liability of the Guarantor hereunder, will in all cases be subject to the Guaranty Limit. Neither the Guarantor nor the Buyer will unreasonably withhold or delay consent to assignment.

This Guaranty embodies the entire agreement and understanding between Guarantor and the Buyer and supersedes all prior agreements and understandings relating to the subject matter hereof. The headings in this Guaranty are for purposes of reference only, and shall not affect the meaning hereof.

Time is of the essence of this Guaranty. The remedies provided to the Buyer in this Guaranty are cumulative and not exclusive of any other remedies provided by law.

Words importing the singular number hereunder shall include the plural number and vice versa and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

### APPENDIX C

## Buyer's Default

## Service Requirements Matrix

By Customer Group, Load Responsibility, SMD Load Zone and Applicable Period

<b>Customer Group</b>	SMD Load Zone	Load Responsibility	Commencement Date	<b>Conclusion Date</b>

# APPENDIX D Contract Rate

By Customer Group, Load Zone and Month of Service, \$/MWh

Customer Group	August 2006	Sep 2006	Oct 2006